

COUNCIL MINUTES

REGULAR MEETING

March 22, 2011

A Regular Meeting of the City Council of the City of Jacksonville was held Tuesday, March 22, 2011 beginning at 7:00 PM in the Council Chambers of City Hall. Present were: Mayor Pro-Tem Michael Lazzara presiding; and Council Members: Jerry Bittner, Fannie K. Coleman, Randy Thomas, Bob Warden and Jerome Willingham. Mayor Sammy Phillips was out of town. Also present were: Richard Woodruff, City Manager; Ronald Massey, Assistant City Manager, Gayle Maides, Interim Finance Director; Glenn Hargett, Communications and Community Affairs Director; Mike Yaniero, Police Chief; Rick McIntyre, Fire Chief; Grant Sparks, Public Services Director; Reggie Goodson, Planning and Development Services Director; Carolyn Lampe, Deputy City Clerk; and John Carter, City Attorney. *An audio recording of the Council Meeting is presently available for review in the City Clerk's Office.

CALL TO ORDER

Mayor Pro-Tem Michael Lazzara called the meeting to order at 7:00 PM.

PLEDGE OF ALLEGIANCE

Council Member Fannie Coleman led the Pledge of Allegiance.

INVOCATION

Mr. John Carter pronounced the invocation.

ADOPTION OF AGENDA AND CONSENT ITEMS

A motion was made by Councilman Bittner, seconded by Councilman Thomas, and unanimously approved to adopt the amended agenda as presented.

ADOPTION OF MINUTES

A motion was made by Councilman Thomas, seconded by Council Member Coleman, and unanimously adopted to approve the minutes of a Special Workshop Meeting held March 8, 2011 as presented, and the minutes of the Regular Meeting held March 8, 2011 as presented.

PRESENTATIONSADMINISTER OATH – PROMOTION OF ASHLEY LADONNA WEAVER TO
CAPTAIN

Mayor Pro-Tem Lazzara reviewed the qualifications and past law enforcement services for Captain Ashley Weaver. Mayor Pro-Tem Lazzara then administered the Oath of Office while Captain Weaver's husband held the Bible and then pinned on her Captain badge. Police Chief Mike Yaniero stated he was looking for great things from Captain Weaver.

REPORT TO COUNCIL – BOARD OF ADJUSTMENT

Mr. Gary Herbold, Chairman of the Board of Adjustment, provided a brief report about the Board of Adjustment. He stated that even though there were no cases reviewed during the last calendar year, several administrative and training meetings were conducted for the members. At the February 23, 2011 meeting, a side set-back variance was granted in order to restore a non-conforming single family dwelling that was damaged by fire. Councilman Jerry Bittner is the Council Liaison to the Board of Adjustment.

PUBLIC COMMENT

Kevin O'Conner, 210 Newport Drive, expressed concern that the permitted pH limit requirement for the Land Treatment Site was not followed and felt DENR did not do their job in enforcing the limit. Mr. O'Conner stated that the City needed to set their priorities on "needs" and not on "wants".

NEW BUSINESSCONSENT ITEMSVOLUNTARY ANNEXATION PETITION – MAI PROPERTY (BAILEY &
ASSOCIATES) – HICKORY ROAD - .44-ACRE TRACT

At the March 8, 2011 meeting, Council adopted a Resolution directing staff to investigate the sufficiency of a voluntary annexation petition received from Bailey & Associates on behalf of Phillip and Claudia Mai. This was a .44-acre tract that was contiguous to the current City limit boundaries. The site was located along Hickory Road adjacent to the Tractor Supply Store property. The site was proposed to provide additional parking facilities for a 6,000 square foot commercial development adjacent to and fronting on US Hwy 258. The commercial parcels were already located within City limits and were the proposed site of a future IHOP restaurant and tenant spaces. The City Clerk had conducted the required investigation and found as a fact that said petition was signed by all owners of real property lying in the area. As provided in

North Carolina General Statute 160A-31, a Resolution had been prepared scheduling a Public Hearing on this annexation for the April 5, 2011 Meeting.

Council adopted the Resolution as presented.

Resolution 2011-10, Bk. 6, Pg. 384

**VOLUNTARY ANNEXATION PETITION – JOHN STEVENSON PROPERTY
(TOYOTA) – 3124 NEW BERN HIGHWAY – 16.72-ACRES**

At the March 8, 2011 meeting, Council adopted a Resolution directing staff to investigate the sufficiency of a voluntary annexation petition received from John O. Stevenson for a 16.72-acre tract located in the Extraterritorial Jurisdiction and contiguous to the current City limit boundaries. The parcel was located at 3124 New Bern Highway and was the site for future development of an 85,079 square foot automobile sales center. The City Clerk had conducted the required investigation and found as a fact that said petition was signed by all owners of real property lying in the area. As provided in North Carolina General Statute 160A-31, a Resolution had been prepared scheduling a Public Hearing on this annexation for the April 5, 2011 Meeting.

Council adopted the Resolution as presented.

Resolution 2011-11, Bk. 6, Pg. 385

**VOLUNTARY ANNEXATION PETITION – KENNITH WHICHARD – 1.39 ACRES –
GATEWAY SOUTH**

On behalf of Kenneth P. Whichard, Jr., John Pierce and Associates had submitted a voluntary annexation petition for a 1.39-acre tract that was contiguous to the current City limit boundaries. The site was located adjacent to the Target Shopping Center, along Gateway South and future Western Parkway. The site was a portion of a larger property proposed for a future Kohl's Department Store. The dedicated right of way for Western Parkway abutting the annexation site would be automatically included in the annexation process. The first step in the voluntary annexation process was to pass a Resolution directing the City Clerk to investigate the sufficiency of the petition.

Council adopted the Resolution as presented.

Resolution 2011-12, Bk. 6, Pg. 387

**SALE OF PROPERTY – PREPARE DEED OF TRANSFER – RAY DEVELOPMENT
& CONSULTING, LLC**

Mr. Cliff Ray, Ray Development and Consulting, LLC, had submitted an offer and proposed agreement to purchase +/- 2.50 acres of City owned property located in the

Jacksonville Business Park, along with a proposed Purchase and Option Agreement for an additional 3.95 acres within two years of closing on the original purchase. At the March 8, 2011 meeting, Council added a condition to the Agreement “That the option cannot be exercised until the buyer has pulled a building permit on the 2.5 acre tract.” A Resolution was also adopted authorizing advertisement of the offer through the upset bid process. The details of the Proposal and the upset bid information were published in the Jacksonville Daily News. The deadline to submit upset bids was March 21, 2011. No upset bids were received by the deadline. Council reserved the right to reject any and all offers at any time. Council approved the Purchase and Option Agreement, and authorized the City Attorney to prepare the Deed of Transfer.

AUTHORIZATION TO CONDEMN FINANCIAL GUARANTEES

As directed by Council, staff requested authorization to process condemnation of the expiring financial guarantees held by the City if the developer was unable or unwilling to provide renewed financial guarantees: Marine Broadcasting Co.; Maynard Manor, Phase VI; and The Gables. It was also recommended that Mayor and Council allow staff, if necessary, to extend the Surety Agreements and Warranties for up to one year.

Council authorized staff to process condemnation of the financial guarantee if the developer was unwilling or unable to provide proper surety and to extend the Surety Agreement.

TAX RELEASES, REFUNDS AND WRITE-OFFS

The County/City Tax Collector and City’s Finance Director recommended releases, refunds, and write-offs of property taxes respectively \$23,328.81, \$4,216.35, and \$54.75 (\$27,599.91). The detail list of these tax releases and refunds was available in the Finance Office for review.

Council approved the tax releases, refunds and write-offs.

ESTABLISHMENT OF THE 2010 REDESTRUCTING COMMITTEE

After each Census, the City was compelled to review the population of the wards and to determine if the deviation from an ideal ward size was significant. Such a review was undertaken when the redistricting data was released from the US Census Bureau and the Jacksonville wards were found to be significantly out of alignment from the ideal ward size. At the January 4, 2011 workshop, Council instructed staff to develop a committee to recommend realignment of the City’s wards and to receive public input before doing so. Staff was assigned by Council and the concept presented for study, input and realignment activities were endorsed.

Council adopted the Resolution; named the following persons to the Committee: Robert Sandy, Chairman; Ernie Wright, Vice Chairman; Robert Warlick, member; Homer Spring, member; Tiffany Burgess Choice, member; Margaret Brown, alternate member; and Jan Bean Slagle, alternate member; and authorized assigned staff to begin the process.

Resolution 2011-13, Bk. 6, Pg. 388

FY11-12 COMMUNITY DEVELOPMENT BLOCK GRANT CONSTRUCTION
APPLICATIONS

Two applications for Community Development Block Grant (CDBG) funding construction projects had been received. The review process had been completed and the staff recommended that the City consider recommendations for funding.

Council approved the application submitted by East Carolina Community Development, Inc.

NON-CONSENT ITEMS

CITY CODE AMENDMENT – NOISE ORDINANCE

Chief Michael Yaniero, Jacksonville Police Department, stated that while responding to recent noise complaints, the Police Department had discovered that a more comprehensive approach was needed in the current Noise Ordinance to address sound pressure levels of noise, specifically the low level frequencies (bass – “base”). These low level frequencies, which caused vibration, were the basis of the majority of recent noise complaints received by the Police Department.

The amended Ordinance provided to Council was based on figures taken from Rutgers University studies. After the field trip last Thursday evening where several Council members toured the neighborhood around the Hooligans establishment with police, Chief Yaniero stated the amended Ordinance was revised to reflect findings that evening from the sound meters.

Using the PowerPoint presentation attached to the official minutes as Exhibit A, Chief Yaniero stated that the “A” rating, which measured just sound, remained the same; the “C” rating was added for sound amplification registering 70 decibels (dB) at any time; and language from the Rutgers study was also added regarding measurements taken at multi-family housing.

Based on discussions during the field trip, it was concluded that four consecutive readings of thirty (30) seconds each would be taken, the meter would be calibrated between each reading, and all four readings had to exceed the allowed limit to create a violation.

Mayor Pro-Tem Lazzara thanked Chief Yaniero and his staff for inviting Council to be physically present and involved in the process. He thanked the residents who allowed them on their property. The goal was to find a win-win for the property owners and business owners.

Councilman Warden also thanked JPD for taking Council on the field trip to experience the effects of the different sound levels. He knew that the Rutgers study and field testing were being relied on, but he hoped this would address the issue. He commented that they were still experimenting and the dB level decided on was a guess.

Councilman Willingham asked how this would affect Concerts in the Park. Chief Yaniero stated there would be no effect. If it was a City or County sanctioned event, the Ordinance did not apply. If it wasn't a sanctioned event, the organizer could seek a permit for the event. Part of the process was putting the burden on the person applying for the permit to talk to the neighbors, letting them know the date and times of the event and getting their approval. If there was a problem with noise during the event and the noise level was not adjusted, the permit could be revoked. The permit could be revoked without sound testing if it was particularly bothersome to the neighbors.

A motion was made by Councilman Bittner and seconded by Council Member Coleman to adopt the City Code Noise Ordinance amendments as presented.

Councilman Willingham asked if the owners of Hooligans supported the amended Ordinance. Mayor Pro-Tem Lazzara stated that an owner/representative was at the demonstration Thursday evening and was part of the hopeful solution. Mr. Woodruff stated that he had a meeting on Friday morning with two police officers and the owner of Hooligans. The owner stated he supported the Ordinance and understood his goal was not only to stay in business, but to be a good neighbor. Mr. Woodruff stated they knew there may still be some issues since every song had a different impact, but everyone involved including staff, Council, owner and neighbors have been educated.

Councilman Willingham commended everyone on their effort, but had concerns. His observation from the demonstration at the last workshop was that there were notes within R&B music that were registering in the 80 dB range. It wasn't the notes that were creating the problematic sound, but the subwoofer. R&B was rhythm based with a different impact. The result was that a particular type of music would be targeted. He noted that the business owner was doing everything we asked regarding sound, but there was still a problem.

Mayor Pro-Tem Lazzara stated the intent was not to single out any particular type of music, but it was the bass notes that were creating a vibration that was disturbing to the residents. The low bass was the irritation.

A vote was taken on the motion and was approved on a 5-1 vote, with Councilman Willingham voting “nay.”

Ordinance 2011-19, Bk. 10, Pg. 313

PUBLIC COMMENT

Carmen Spicer, 103 Cottage Grove Circle, asked about the Noise Ordinance in relation to Downtown Alive events. BOLD did seek a permit, but asked what would happen if there were neighbors in opposition. Mr. Woodruff stated he would meet with Ms. Spicer after the meeting to discuss the issue.

REPORTS

LAND TREATMENT SITE

Mr. Woodruff stated that the first control burn at the Land Treatment Site had been rescheduled twice because of wind conditions, but he hoped within the next week they would be able to start the control burn.

NATIONAL LEAGUE OF CITIES CONFERENCE REPORT

Councilman Willingham stated he attended the National League of Cities Congressional Conference. One highlight of the event was the North Carolina delegation meeting with Senator Kay Hagan. The main focus of the North Carolina delegation was saving the Community Block Grant Funds. Not only was there a cut in President Obama’s budget, but in House Bill HR-1 there was a proposed \$2.5 billion cut. The NC delegation voted for the cut along party lines, but Walter Jones voted against it. Councilman Willingham applauded him for voting his conscience. The Senate indicated that they were not going to pass House Bill HR-1, but the future of CDBG funds was still in question. The City was doing good things with CDGB funds and we needed to lobby against those cuts.

Mayor Pro-Tem Lazzara agreed with Councilman Willingham’s comments. He felt it would be a shame to lose CDBG funding and we needed to continue to talk to our legislators.

BOARD OF ADJUSTMENT VARIANCE

Councilman Bittner commented on the Board of Adjustment’s most recent case which dealt with a property owner who was not granted a permit to rebuild his home that was damaged

by fire because it was found that it encroached the side yard set-back by nine inches. The building was in compliance when the property was annexed into the City, but the City standards have since changed. After review of all the details, a variance was granted.

CIVIC AFFAIRS COMMITTEE - REDISTRICTING

Councilman Bittner stated that as part of the Civic Affairs Committee, the redistricting committee would be meeting soon to bring into alignment the four wards which, according to recent Census information, were no longer in equal standing.

ONWASA UPDATE

Councilman Bittner reported that ONWASA voted 4-3 not to hire a search firm and would begin searching for a new executive director in-house.

ETJ BOUNDARY

Councilman Thomas stated he had a request from a citizen for the procedure on how the City could reduce the ETJ. Mr. Carter stated he would talk to Councilman Thomas about the situation. The law said the ETJ should follow boundary lines and Council had the authority to remove property from the ETJ depending on the circumstance.

ADJOURNMENT

A motion was made by Councilman Bittner, seconded by Councilman Thomas, and unanimously adopted to adjourn the meeting at 7:44 PM.

Adopted by the Jacksonville City Council in regular session this 5th day of April, 2011.

Sammy Phillips, Mayor

ATTEST:

Carmen K. Miracle, City Clerk

Exhibit "A"

Jacksonville City Council



March 22, 2011

New Business
City Code Amendment
Noise Ordinance

Agenda Item #9



City Code Amendment – Noise Ordinance

- "A" weighting
 - 70 db(A) between 9:00 AM and 10:00 PM
 - 60 db(A) 10:00 PM and 9:00 AM
- "A" weighting not changed from current ordinance
- "A" weighting best for high frequency sound levels



City Code Amendment – Noise Ordinance

- "C" weighting
 - 70 db(C) - all times of day
 - "C" weighting added to current ordinance
- "C" weighting best for low frequency (Bass) sound levels



City Code Amendment – Noise Ordinance

- Multi-family residences
 - Measurement needed clarification
 - When conducting indoor sound level measurements
 - 3 feet from any wall, floor or ceiling
 - All exterior doors and windows closed
 - Sound sources (tv, stereo, etc.) shut off
 - No measurement in casual use areas: hallways closets, restrooms



City Code Amendment – Noise Ordinance

- Taking the sound readings
 - Officer will use sound meter to take:
 - Four consecutive readings
 - Readings are 30 seconds each
 - Meter is recalibrated between each reading
 - All four readings must exceed allowed limits

