

**CITY OF TEMPLE TERRACE, FLORIDA  
MAYOR AND CITY COUNCIL  
MINUTES**

**Regular Meeting  
Tuesday, July 3, 2007  
Council Chambers-City Hall**

Having been duly advertised as required by law, the regular meeting of the Mayor and City Council of the City of Temple Terrace, Florida, was held on Tuesday, July 3, 2007, in the Council Chambers at City Hall.

**PRESENT WERE:** Mayor Joe Affronti, Council Members Frank M. Chillura, Alison M. Fernandez, Ken Hallway, and Mark A. Knapp, City Clerk Lisa Burns, City Manager Kim Leinbach, and City Attorney Ted Taub. **ABSENT WAS:** Council Member Govin.

**ALSO PRESENT WERE:** Code Compliance Director Joe Gross, Parks & Recreation Director James Chambers, City Engineer Joe Motta, Fire Chief Keith Chapman, Public Works Director Steve Hodge, Police Chief Tony Velong, Deputy City Clerk Linda Brewer, Finance Director Diane Reichard, Assistant Library Director Armand Ternak, Assistant Director of Community Services – Planning Ann Sheller, Senior Planner Susanne Hicks, Debbie & Keith Carson, Joe Bell, Randy Simmons, Joe Taggart, Josh Diggs, Larry Modrcin, Diane Modrcin, Anne Pollack, Cheri Donohue, Farode Mohammad, Sal Barman, Monica Sandrez, and several other persons.

There being a quorum present, Mayor Affronti called the meeting to order at 7:00 p.m., led the Pledge of Allegiance to the flag, and offered a brief invocation.

**Proclamations, Recognitions, and Special Presentations:**

**1. Proclamation – "Recreation and Parks Month."**

Mayor Affronti presented Parks & Recreation Director James Chambers a Proclamation recognizing July, 2007, as "Recreation and Parks Month" in Temple Terrace. Mayor Affronti commended the Parks & Recreation Department for their outstanding work in conjunction with a district all-star youth baseball tournament that was recently hosted at the facility on US Highway 301.

**2. Special Announcement – "Fourth of July Festivities."**

Cheri Donohue, Executive Director of the Greater Temple Terrace Chamber of Commerce announced the plans for the Fourth of July Festivities. She said the festivities will begin with the parade at 10 a.m. tomorrow morning, and in keeping with this year's theme of "American Heroes," will feature Police Chief Tony Velong and Fire Chief Keith Chapman as Grand Marshals. In mid-afternoon, she noted Parade sponsors will be feeding all of the City employees and other volunteers who have been working hard getting ready for this year's event. She noted fireworks will begin at 9:15 p.m.

**Minutes of Previous Meetings:**

Upon motion of Council Member Chillura, seconded by Council Member Hallway, and unanimously carried, the **MINUTES** of the June 19, 2007, Regular City Council Meeting were **APPROVED**. Council Member Govin was **ABSENT** and did not vote.

**Public Hearings:**

**1. Text Amendment – Planned Research Office Facilities.**

Mayor Affronti opened the Public Hearing and called on the Community Services Department to introduce the topic.

Stating this is the second of two required Public Hearings, Assistant Community Services Director Ann Sheller presented the proposed text amendment to the Planned Research Office Facilities (PROF) district site design standards, the purpose of which is to allow consideration by City Council of a waiver to the 35 foot building height standard on properties zoned PROF that are adjacent to Single Family Residential zoning districts. She continued that as currently written, Section 25.710.3(d)(1) allows a maximum building height of 65 feet, except for sites adjacent to single family zoning districts where the height limit is limited to 35 feet.

The Assistant Director explained the proposed waiver allowance will facilitate the continuing development of Telecom Park by providing greater flexibility in site design and utilization of sites with limited buildable area and allow more intensive use of land and development opportunity in keeping with the purpose of the professional office park. In addition, she said the restrictions of 35 feet adjacent to the single family districts severely limits most of those lots that are adjacent to the Hillsborough River, which is one of the biggest amenities of the park, and which also has a minimum setback of 200 feet from the river before a building can be placed on a site.

The Assistant Director stated that any waiver request would come before the Council as part of a site plan review, where Council could consider any impacts and provide conditions to mitigate those impacts. She noted that the Hillsborough County City-County Planning Commission has reviewed the proposed amendment and found it consistent with the Comprehensive Plan and have no objections to the amendment. She concluded that staff is recommending approval of the proposed text to Section 25.710.3(d)(1) per the language identified in Attachment A of the Council Packet.

There being no public comment or comments from the Council, Mayor Affronti closed the Public Hearing.

**2. Conditional Use – New Global Holdings, Inc.**

Mayor Affronti opened the Public Hearing and called on the Community Services Department to introduce the topic.

Senior Planner Susanne Hicks stated that the Community Services Department received a conditional use application [CU-07-01] and site plan [SPR-07-03] submitted by Pamela Jo Hartley, Esq. and Peter Alfonso, Jr., Architect, on behalf of New Global Holdings, Inc., applicant, for the proposed conversion of an existing convenience store located at 13406 N. 56<sup>th</sup> Street to a liquor package sales store.

The Senior Planner explained the property is zoned CG (Commercial General) and the existing one-story convenience store building contains approximately 2,670 square feet. The Senior Planner continued that the application has been reviewed according to several pertinent sections of the City's Code of Ordinances, including: Section 25.530.10.d(10) Specific Criteria for Conditional Uses in the CG Zoning District; Section 25.535 Conditional Uses; Section 25.630, General Site Development Plans; and Chapter 3, Alcoholic Beverages.

The Senior Planner noted that the applicant currently holds a 2-APS alcoholic beverage license for sale of beer and wine in sealed containers for consumption off the premises only, in connection with the existing convenience store. As a condition of approval, she said the applicant will be required to obtain a 3-PS license for sale of liquor, beer, and wine in sealed containers for consumption off the premises only, in order to operate as a liquor package sales store.

The Senior Planner continued that according to the requirements of Chapter 3, the applicant has submitted a wet zone survey that indicated: 1) There are no "protected facilities" within 1,000 feet of the proposed package sales store, as defined under the City Code as churches, schools, child care facilities, and public uses such as libraries, and recreation and community centers, and 2) There are no other package sales stores within 2,000 feet of the site.

The Senior Planner explained the proposed conversion from convenience store to package sales store will utilize the existing building with no changes to its footprint; however, staff has proposed some conditions to the approval requiring the applicant to bring the building up to Code for several deficiencies that exist in the current building. She stated the applicant has worked with City staff to develop a site plan that will bring the property into compliance with City Codes for commercial building, including a reorganization of the parking lot to provide two additional parking spaces, and realign the driveway to provide space for two one-way driveways and landscaping. She said applicant has agreed to work with staff on improvements to the building façade, such as new wall finish, painting, and awnings. She said they will also include reducing the clutter of some of the signs in the window.

The Senior Planner said the application has been reviewed by the City's Development Review Committee, who have recommended approval subject to the Conditions of Approval; it has also been reviewed by the staff of the Hillsborough County City-County Planning Commission for consistency with the City's Comprehensive Plan and they have no objections.

The Senior Planner briefly reviewed the Conditions of Approval, as set forth below, and in the Memorandum to the City Manager dated June 21, 2007, highlighting those specific to this property, which are No. 1, Operation of Business, and No. 2, Alcoholic Beverage License.

#### **CONDITIONS OF APPROVAL – CU # 07-01/SPR # 07-03**

1. Operation of Business shall be in compliance with City Code Chapter 3, Alcoholic Beverages, including hours of operation for establishments selling alcohol for consumption off the premises.

2. Alcoholic Beverage License - The applicant will provide evidence that a 3PS license (for sale of alcoholic beverages in sealed containers for consumption off the premises only) has been obtained prior to issuance of a certificate of occupancy for package sales store.
3. Existing Structural Deficiencies – Existing structure and accessories will be brought into compliance with all City building and fire codes, including electrical and fire safety, and hydrant locations. Existing dilapidated fencing will be removed and a 6’ high commercial grade PVC fence will be installed along the entire north, south and west lot lines prior to issuance of a certificate of occupancy for package sales store.
4. Right-of-Way Permit – Applicant will provide evidence that a Hillsborough County permit for work in the right-of-way has been obtained prior to issuance of infrastructure permits.
5. Exterior Light Plan – Applicant will provide verification that the existing parking lot and area lighting illumination complies with minimum Code standards prior to issuance of certificate of occupancy. [Section 25.640(a)(4) and Section 25.640(d)(9)].
6. Free-Standing Sign – The free standing sign is an existing non-conforming sign due to its location less than five feet from the north and east property lines. Any modifications to this sign shall be required to comply with City Code regulations regarding non-conforming signs. [Section 25.765 and Section 25.825.2]
7. Window Signs – All window signs, including but not limited to, size, number, type, and location, shall comply with the City sign ordinance. [Section 25.765]
8. Dumpster Enclosure – The dumpster enclosure shall be constructed of materials and colors that match those of the principal structure. [Sections 25.640(a)(1) and 25.640(d)(3)]
9. Parking Area – Curbing shown on the site plan as being located within the right-of-way will be moved westward to the property line. Parking lot pavement markings will include stop bars and will appropriately delineate the loading zone, pedestrian crosswalk, and ADA accessible parking and ramp.
10. Landscaped Areas – The existing pavement on the south side of the property, between the future dumpster location and the east property line, shall be replaced with a pervious, green landscape area with curb. An appropriate irrigation system will be provided for all landscaped areas. [Section 25.780.7]
11. Expiration of Conditional Use/Site Plan - If the conditional use is not established within six (6) months from the date of approval, then the approval shall be null and void, except that City Council may grant one six month extension to said approval. [Section 25.535(e)]

All approved site plans are valid for six (6) months from the date of approval. When approval lapses, the new submittal must meet the rules, regulations, standards and criteria in force on the date of “acceptance.” Also, the building permit issued for the site shall be automatically revoked without further action by the City unless site clearing and substantial

Construction has been commenced within 180 calendar days after the date City Council approves the site plan; provided, however, City Council may grant one extension of up to 180 days within which site clearing and substantial construction must be commenced. The applicant must begin and substantially complete the development within two years from the time of final approval. If the development is to be constructed in stages, the applicant must begin and substantially complete the development of each stage within two years of the time provided for the start of construction of each stage in the development schedule. [Section 25.115 and Section 25.645]

The Senior Planner advised that the applicant and his representative are present this evening to respond to any questions Council may have.

There being no one in the audience requesting to speak, Mayor Affronti called for Council comments.

Council Member Knapp said that generally when site plan approvals come before Council, there are proposed building elevations to review, and none were received from this project.

The Senior Planner responded that as an existing building, the applicant was not planning to make any changes to the building, which is why only a photograph was included in the information presented. She suggested the Council may be able to address their questions about planned changes to the building to the applicant and his representative.

Council Member Knapp referenced pending litigation that has been going on quite some time concerning a building elevation and site plan review and while that may be much more complex, he wanted to be sure there is no misunderstanding as to how the exterior of the building would look, based on the Conditional Approval.

Pamela Jo Hatley, Attorney for the applicant, 14517 No. 18<sup>th</sup> Street, Tampa, addressed the Council, stating that her client has no objections to the Conditions of Approval. She expressed appreciation to staff for working with them and educating them as to the City's requirements in this process. She said her client is happy to make any necessary upgrades to the building and also work with the City to beautify the property, make the necessary upgrades to bring it up to Code, and reduce the clutter to make it look nice. As an existing building, elevations were not required, she said, but they intend to beautify it and work with staff to meet those requirements.

Council Member Knapp said the question was actually for City staff, in that generally there are elevations provided before site plan approval, and evidently the applicant was not required to do so before coming to Council. He explained he was asking staff why it was different from all the other site plan applications they have reviewed for it to come to Council without site plan elevations.

The Senior Planner responded there is not a Code requirement for elevations where there is not a new building being constructed and they are working with an existing building, as far as they know. She said there was nothing she could require them to do, other than to request they work with staff on suggestions, such as putting awnings and new paint and finish on the front.

Council Member Knapp said the reason he keeps bringing this up is that he has been on the other side of the table. He explained that any time he has brought something to the City that involved a change of use, in the past he was required to supply elevations. He said he wanted to ensure the City is consistent with their requirements, regardless of who the applicant may be.

Mayor Affronti asked the City Attorney whether the applicant should be required to provide elevations. In his opinion, Mayor Affronti said the building, as it currently is, is not a very attractive building from the outside. He said it would be nice to know what changes are proposed to make it a more attractive building so that it will fit in more with the area.

The City Attorney responded that City Code Section 25.535, relative to Conditional Use, states that conditional use approvals *may* be authorized by the City Council. He commented that it is “permissive” - it is not an absolute right; however, the Council does, traditionally, and should, rely in part on the recommendations of staff when making their decision. The City Attorney pointed out that Subsection 25.535(d) states that additional conditions may be imposed, including, but not limited to, height, size, or location limitations on buildings or other structures. He said notwithstanding the fact that staff has given the applicant a set of conditions that staff feels will adequately protect the City, there is an opportunity for Council, in conjunction with the public hearings, to look at the possibility of additional conditions.

The City Attorney noted that he is not suggesting any additional conditions are needed or should be imposed, but the Council certainly has the right, under the way the City’s Ordinance is structured, to review the Conditions that have been imposed and say that they believe that within the list provided on Pages 341 and 342 of the City Code, there are a number of items that allow the Council to play a part in the conditioning of this Conditional Use, within reason, under the criteria and parameters set forth in the Ordinance. The City Attorney continued that although an elevation per se is not mentioned, clearly the language about height and intensity of buildings is another way of defining elevation. He said he believes Council should examine the proposed Conditions of Approval, and should, in accordance with the provisions in the Code, also examine the additional Conditions of Approval that *can* be imposed as a matter of sound discretion and not something disguised as a means to support an approval or denial.

Mayor Affronti said he doesn’t object to the project moving forward, but he would like to see what the structure will look like when completed. He commented the City is going through major redevelopment and they want to make sure any new or remodeled structures blend in well with the redevelopment in an effort to upgrade the entire City. Council Member Hallway concurred.

The City Attorney said he believes it is necessary for the Council to make sure they haven’t violated any procedural or substantive due process to identify items set forth in the Ordinance criteria under Section 25.535(c) and (d) as shown on pages 341 and 342. He said if they are not prepared tonight, the Council has the right to continue the Public Hearing until the Council has had an opportunity to review all of the criteria.

Council Member Fernandez questioned what the City’s rights and obligations are when a business meets the zoning criteria and the alcoholic beverage license criteria.

The City Attorney responded that assuming all those criteria are satisfied or indicated in the record to be satisfied, the Council would have to have a sound reason to deny, rather than just that they don't like the idea. He noted the City doesn't handle alcoholic beverage licensing, adding that is handled by the State of Florida, and this applicant is proposing to add package sales of liquor to beer and wine sales; other than that, he understands the use is to remain the same. He explained that is the difference in "use" and is why there are criteria set forth so every property owner knows what they might be faced with if they want to upgrade their property or change it to some extent. He concluded that is why the provisions are in the Code to be followed by staff and by the Council as they consider the application and make their decision.

Council Member Fernandez questioned what the possible impact would be to City staff or what difficulties that a change such as this could pose for the City – not just the positives.

The City Attorney said that in his opinion, every applicant for a particular use of property or conditional use has to stand on its own force. He said there is not necessarily a generic conditional use that applies to all beverage sales or locales; one locale may be appropriate and another locale may not. He said they have to approach these on an ad hoc basis against the backdrop of the general obligations as set forth, and give a reason if they are opposed to an application in order to protect the City from accusations of abuse of discretion. While the Council has discretion, it is not unfettered, he said.

Council Member Fernandez asked what the applicant's assurances or plans are to maintain the property more in the image the City would like to have in all of the City's commercial areas.

Ms. Hatley said her client leased this property in December 2006, so he is still rather new to the area. She said he understands and appreciates the City's redevelopment plans and improvements going on all over the City, and in that spirit, he intends to improve his property so that it blends in and becomes part of the City that the City can be proud of. While the property has not always been well-maintained, she said her client's intentions are to change that. While the site plan is not in color and is not an elevation, she said the site plan shows, from an aerial and technical viewpoint, the changes that are proposed in the front with the landscaping.

Mayor Affronti asked to hear from the applicant.

Farode Mohammad, applicant, explained he leased the property about six months ago, and decided later to change it to a package liquor store, having had a great many tourists asking for the location of the nearest liquor store. Stating he had worked with Senior Planner Susanne Hicks, he detailed his plans to add PVC fencing around the property, landscaping to be put in front, the in-and-out for the traffic flow, the different place for the dumpster, and the extra parking for customers. In response to a question from Mayor Affronti about any changes to the façade, Mr. Mohammad said he will do whatever is required and reasonable. He said to repaint the building and put in landscaping or whatever the City's requirements are, he is willing to do if he feels it is reasonable. He assured the Council he will keep the property clean, nice, and professional.

Council Member Chillura questioned if they were to grant the conditional use permit, since Mr. Mohammad leases the property, and he were to leave in a year or two, whether this property would stay wet zoned.

The City Attorney responded that the wet zoning generally runs with the land. He commented that he hasn't seen Mr. Mohammad's lease agreement, so he doesn't know what constraints may be in place should he decide to terminate his lease or leave at the natural expiration.

Mr. Mohammed interjected that he has made an offer to purchase the property, but the owner is not willing to sell at this time.

The City Attorney suggested that one small measure of protection, not necessarily a legal requirement, would be an indication from Mr. Mohammad as to how cooperative he wants to be to make this a very compatible use with the City, and perhaps an affidavit from the landlord acquiescing to the conditions that might be imposed by the City to which the tenant is agreeing, for as long as the lease is in place. While the City hasn't done it in the past, he said conditional uses and special exceptions can sometimes be structured in a way that they do terminate on certain conditions, if they are reasonable, adding that he hasn't researched that last point, but would be glad to look into that if Council wishes him to do so.

Council Member Chillura said he would feel comfortable with a reasonable check and balance in place, such as with the condominium project on Temple Heights where they said that they have to be owner-occupied and not rentals. He said something of that nature would put him at a comfort level. In addition, he said he agrees with Council Member Knapp in wanting to see a more detailed site plan. He said they should be more consistent; in the past some site plans didn't require detailed landscaping and irrigation plans up front, asking for them by the time of the Certificate of Occupancy; sometimes they get them, and sometimes they don't. He reiterated he would like to see something more consistent. As he looks at the information provided, he said it mentions shrubbery and fencing, but not what kind. He commented that in the past they have had representations from property owners that haven't come to fruition. He restated that he would like to see a more detailed plan that explains the kinds of trees and shrubs, and the irrigation, all of which are new, so it would be beneficial to see a detailed plan, and would be consistent to prior plans.

The City Attorney questioned the analogy to owner-occupied, stating that he doesn't see how that can be imposed, because the conditional use criteria and the rationale is a matter of law and set forth in the ordinance. However, he said he believes additional conditions for the establishment of an operation for this use can be imposed, believing that a more detailed site plan would be in that parameter. He explained they would have to specify for the applicant in exactitude, so they know what the Council is interested in seeing and it would fall within the items circumscribed for any applicant. To do that, he said he believes they are on sound ground.

Council Member Chillura clarified his analogy was an example of imposing certain other conditions, stating that they have looked at other checks and balances with other projects to protect the best interests of the City, as well as encourage development. As suggested by the City Attorney, he said he would like to have an affidavit from the owner addressing the issue and a more detailed site plan.

The City Attorney said as far as the detailed site plan, there are certain aspects of it, such as whether the mansard roof is going to stay in the same configuration, and signage, which were mentioned in the context of dealing with them in the future, whereas the Council has the right to cross that bridge now in terms of approval, disapproval, or approval with modifications.

Council Member Chillura explained he is not opposed to what they are trying to do, but wants to ensure that the Council knows what is going in there. He said a verbal representation is one thing, but having it in black and white is a step further and something they have done in the past, which he would like to see.

Mayor Affronti said he felt it would be best for Mr. Mohammad's protection also. He suggested that Mr. Mohammad get with City staff and work out the details of the site plan, so when it comes back before Council and is approved, there will be no questions later. He said this way Mr. Mohammad can negotiate with staff and agree on the parameters, which will help both Mr. Mohammad and the City.

Mr. Mohammed asked if he made lots of changes, changing the building, what assurance would he have that he would get the conditional use zoning.

The City Attorney responded that Florida doesn't have "contract zoning." He said he was simply suggesting that if there are concerns by the Council that they can specify, they can continue this Public Hearing to a time certain in two weeks, giving Mr. Mohammad a couple of weeks to work with staff. Then Mr. Mohammad can come back before Council with a little more complete package that would perhaps eliminate some of the concerns as expressed by a couple of the Council Members, he said.

Mayor Affronti said that once the concerns are addressed and the Council grants the Conditional Use Permit, they are free to move forward.

Council Member Knapp wanted to make note that what will come back before Council will include proposed elevations.

The City Attorney asked Ms. Hatley to respond for her client as to whether these requests are doable.

Ms. Hatley said the frustration is that the City Code has certain requirements, and the burden of the applicant in a Conditional Use Application is to meet the Code requirements and show consistency with the Comprehensive Plan. She said they feel they have done that, having worked diligently with staff. She said there was never any requirement that they have something more detailed, because of the nature of the request, being an existing building. She said it is frustrating from the applicant's standpoint to come before Council tonight and find that suddenly there are perhaps requirements possibly going beyond those found in the City Code. She said certainly they intend to go back and work with staff and bring Council what they need to see in terms of elevations and a more detailed site plan, but they would like to know exactly what the Council expects from the applicant; they can't be stumbling around in the dark.

The City Attorney commented that under the Code, hours of operation of the use may be established as additional conditions for establishment and operation of the use. He asked whether that has been done.

Ms. Hatley said she has reviewed the Code several times and that is in Chapter 3, for a package liquor store.

The City Attorney noted that there is a possibility that hours of operation of the use can be adjusted; he suggested that before continuing about the frustrating situation, it might be well to have an opportunity to view the entirety of the Ordinance besides the list of criteria. He said he doesn't believe the Council is trying to reinvent the wheel; they just want more of a comfort level as to what will be done.

Ms. Hatley said she has reviewed Chapter 3 and Chapter 25 of the Code several times. She said they will go "back to the drawing board," but want to make sure when they do, that they know what they are working towards.

The City Attorney said they haven't asked the applicant to go back to the drawing board to reinvent this. He suggested they listen to Council Member Chillura's points and the questions from Council Member Knapp, noting that those are the only concerns expressed by the Council in this Public Hearing.

Mayor Affronti said he believes they are asking that Mr. Mohammad go back with staff and work out a plan that would help the physical appearance of the building that would be acceptable to staff and to Council.

Council Member Knapp said he understands that they have brought to the Council what staff said was okay, but obviously it wasn't acceptable to the Council, so he can understand why they are asking for more direction.

The City Manager said that in listening to the Council, he believes the applicant is being asked for more specificity in terms of the landscaping types - a little bit more information on which to base their decision for approval of the Conditional Use. Also, he said the Council is in general agreement in trying to make improvements to the façade of the building to make it more attractive, which he believes could be done quickly. The City Manager suggested that the Public Hearing be continued to the next meeting in two weeks. He said staff can meet with the applicant to see if they can work out those details with them.

Council Member Mark reviewed that during his previous tenure on Council, prior Codes for package stores required that package stores had to be located in 100,000 square foot retail shopping centers or better. Finding that to be too restrictive for the small business owner, he said prior Councils made a change in the Code to eliminate that, but then at that point, they also had the requirement that the building had to be 5,000 sq. ft. or larger for such a facility. He observed that now it appears they have dropped that restriction. In this particular case, he said he has no problem with the actual use; however, since the City has loosened the restrictions regarding package stores, he wants to see proposed elevations along with the site plan.

Council Member Knapp explained when they consider conditional use applications, the approval hinges a lot on the investment on the applicant's part. He said if the City is making an investment with the applicant, they want to ensure the applicant's investment is substantial also, in the sense of cosmetically speaking to the eye or curb appeal. He concluded if they are going to approve a conditional use, they want it to be for a good reason.

Council Member Holloway said Mr. Mohammad said early on that he has plans to renovate the building; Council is asking Mr. Mohammad to put those plans on paper and bring it back to Council so they can see and understand what the plans are. Mr. Mohammad responded affirmatively.

There being no public comment or further comments from the Council, Mayor Affronti closed the Public Hearing.

Upon motion of Council Member Knapp, seconded by Council Member Chillura, **RESOLUTION NO. 059-07(m)** was **ADOPTED**, continuing the Public Hearing on **CU # 07-01/SPR # 07-03**, New Global Holdings, Inc., for two weeks to 7:00 p.m., or soon thereafter, on July 17, 2007, to enable the applicant to come back before Council with a more complete application that includes, but is not limited to, a more specific site plan with proposed elevations of the building. Vote on the motion being: Council Members Chillura, Fernandez, Holloway, and Knapp voting "aye," no "nay." Council Member Govin was ABSENT and did not vote.

**There were no persons wishing to be heard on items NOT listed on the Agenda, and there was no correspondence to come before the Council for consideration and action.**

### **Presentations:**

#### **1. Business Regulations.**

Finance Director Diane Reichard said the proposed changes to the City's Code are primarily the result of 2006 Legislation, which corrected the language from "Occupational License" to "Business Tax" and from "license" to "receipt." She explained the changes required the business tax sections to be removed from regulatory provisions in Chapter 13 and put into Chapter 19, Taxation.

In addition to those changes, the Finance Director briefly explained changes to the definition for *Administrative Office*, and an exemption for IRS 501(c)3 organizations. She commented that while several of the rate structure categories are old or out-dated, the law does not allow revisions at this time.

**There were no Site Plan Reviews for consideration and action by the Council.**

**Resolutions for Consideration and Action:**

The City Manager read through and briefly explained the Resolution listed on the Consent Agenda, stating that the Police Department has received an anonymous donation in the amount of approximately \$57,000 for the purchase of a Laser Shot Firearms Training Simulator for the benefit of the Police Department. He explained the purchase would be by government contract; Council's approval and acceptance of the donation and the expenditure of funds for that purpose is recommended.

Council Member Hallway asked for more information about the simulator. Police Chief Velong explained that it was developed initially for military combat training. He said the training consists of weapons, such as handguns, M-16 rifles, and MP-3 fully automatic sub-machine guns, as well as shotguns. He said the simulator consists of a laptop, screen, speakers, and software that are attached to the laptop. He explained that the weapons that come with the system actually recoil, providing the same feel as if the trainee was actually firing the weapon. He said the training is to help police officers learn to make better and faster decisions when confronted with those types of situations where they have to draw and use their weapons. He explained how the software works and how it keeps track of training, concluding that it is an excellent training tool. He commented that it will also be used in the Citizens' Police Academy.

Upon motion of Council Member Hallway, seconded by Council Member Knapp, and unanimously carried (Council Member Govin was absent and did not vote), Resolution E-1 was adopted by consent, being:

**RESOLUTION NO. 060-07**, approving the purchase of a Laser Shot Firearms Training Simulator under the Government Contract #GS02F0207P from Laser Shot, Inc., in the amount of \$57,237.50; payment for said purchase to be made from account 001-1411-521-6497.

**Proposed Ordinances for Consideration and Action:**

Following **SECOND** and **FINAL** reading, by caption, upon motion of Council Member Hallway seconded by Council Member Fernandez, **ORDINANCE NO. 1207** was **ADOPTED**, being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA AMENDING CHAPTER 25, TEMPLE TERRACE CODE OF ORDINANCES, BY REPEALING SUBSECTION 25.710.3(d)(1) IN ITS ENTIRETY AND BY ENACTING A NEW SUBSECTION 25.710.3(d)(1) TO ALLOW A WAIVER PROVISION TO SUBSECTION (1) HEIGHT, IN THE PROF (PLANNED RESEARCH OFFICE FACILITIES) ZONING DISTRICT; PROVIDING A SEPARABILITY CLAUSE, EFFECTIVE DATE, AUTHORITY TO CODIFY AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.** Vote on the motion for adoption being: Council Members Chillura, Fernandez, Hallway, and Knapp voting "aye," no "nay." Council Member Govin was **ABSENT** and did not vote.

Council then heard **FIRST** reading, by caption, of a proposed ordinance, being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA, AMENDING CHAPTER 13, LICENSE AND BUSINESS REGULATIONS, AND CHAPTER 19, TAXATION, TEMPLE TERRACE CODE OF ORDINANCES, AS THEY RELATE TO LOCAL BUSINESS TAXES; AMENDING PROVISIONS OF CHAPTERS 13 AND 19 TO CONFORM TO FLORIDA STATUTES CHAPTER 205, RELATIVE TO LOCAL BUSINESS TAXES, AS SET FORTH IN EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF; PROVIDING FOR A LOCAL BUSINESS TAX INCREASE IN ACCORDANCE WITH FLORIDA STATUTES §205.0535(4); PROVIDING A SEPARABILITY CLAUSE, EFFECTIVE DATE, AUTHORITY TO CODIFY, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.**

**Unfinished Business:**

**1. Contract Award – City Auditor.**

The City Manager said at the direction of Council, the Audit Committee reconvened and requested quotes from the three audit firms. After deliberations, he said the Audit Committee recommended the contract for audit services be awarded to McDirmit Davis & Co. in the amount of \$30,280, \$31,200, and \$32,200 for fiscal years ending September 30, 2007, 2008, and 2009 respectively. He said the contract provides for a two-year extension option.

Council Member Knapp reviewed that the Council directed the Audit Committee to use compensation as part of the decision-making process. He said the package has come back with the compensation information, and their proposed selection is not the lowest qualified bidder. He questioned why the lowest bidder was not recommended.

Mayor Affronti said it was his understanding that they cannot use compensation as the sole reason. The City Attorney confirmed that the lowest bid shouldn't be used solely for the selection.

Council Member Knapp said that if all firms are qualified, why they would not select the lowest bidder, unless they are suggesting the firm they have had for the last ten years is not qualified.

Mayor Affronti responded that reading through the material provided, the number of hours that were going to be spent by the principals of the firm were significantly higher (64 hours compared to 11 hours) by the McDirmit firm over ValienteHernandez. Mayor Affronti said he believes the rationale is that it will take a lot less staff time working with the auditor by having more experienced people working on the audit rather than staff.

Council Member Halloway explained that ValienteHernandez has only 12 hours allocated for CPAs on the job, while McDirmit has 64 hours. He explained this type of work requires professional expertise, so among other things, they considered McDirmit the best qualified firm to do the job within the parameters of what the City can afford.

Council Member Halloway said they discussed this issue for quite some time, with everyone coming to the same conclusion. Obviously, he said if it was a perfect world, they would pick CPA Associates, which were the number one firm based on professional qualifications and capabilities, but their requested compensation was much too high for the City. The next firm in line was McDirmit, which they felt was better qualified than ValienteHernandez, he said, so that is why they recommended McDirmit.

Mayor Affronti said he understands their recommendation for a CPA firm initially would have required them to sit down with the recommended firm to negotiate a fee that was affordable to the City within their parameters, which he believed to be in the range of \$35,000. He said if the firm initially recommended, CPA Associates, had come in at \$45,000, they would have gone to the next firm then, which was McDirmit, to see if they were in the "ballpark." Mayor Affronti said he believes the Committee has gone through a great exercise to come to this conclusion, and the Council should respect their opinion.

Council Member Chillura expressed concern that they keep trying to dress up the issue, stating that the current firm will only give the City 11 or 12 hours, with the new firm proposing 64 hours. He questioned what ValienteHernandez has done in the last ten years that has been unsatisfactory, adding that every audit they have done has received excellent responses from staff, whereas now he is hearing they don't have enough staff time from the firm or enough principals involved. While he doesn't care which firm is selected, he said he can't accept the answers he is being given to qualify a particular firm, based on this reasoning. He said he looks back and wonders whether information was misrepresented over the last ten years. He reviewed various positive comments that had been made in the past in comparison to statements now being made, that a lot more hours are needed from the principals. He concluded that the explanation being given is what he is having a problem with.

Mayor Affronti recalled one thing brought up at the last meeting was that the Assistant Finance Director, who was an excellent financial person, recently retired; she carried a huge load during the audit, and now they will have to rely on the auditors to do the bulk of the work, which wasn't required before.

The Finance Director prefaced her remarks by thanking the Audit Committee for their hard work on this process. She briefly explained that the RFQ process had nothing to do with the quality of work by ValienteHernandez, which she said was excellent. She reviewed the comments from the references she checked for McDirmit, which were excellent also. She said Council Member Halloway brought up the Sarbanes-Oxley Act, noting that sometimes staff gets comfortable with an auditor and vice-versa, suggesting that perhaps it is time for a change; however, she pointed out that is the Council's decision, and staff will work with whomever is approved by Council. From the purely financial position and compared to the professional position, the Director stated that CPA Associates came in highly ranked, based simply on the RFQ. She said they asked for the firms to write down their written proposals, the firms did so, and just as the Council as business persons would do, the Audit Committee brought them in for questions. After the questions were asked, she said they could see how CPA Associates rose to the top; their price reflects their professionalism, noting again, that it has nothing to do with any dissatisfaction of ValienteHernandez.

The Finance Director continued that if they choose someone other than the recommended firm, noting that they cannot select a firm on price alone, according to Florida Statutes, they have to give a reason why the firm recommended by the Audit Committee is not selected.

Council Member Chillura said his point is not why or why not choose them; he was questioning the explanation given. He said if what Mayor Affronti stated, that the Assistant Finance Director retired and she needs more staff assistance, he can accept that reason. He said if the Finance Director can reasonably justify making the change, he would accept that.

In response to Mayor Affronti asking the Finance Director if his comments were correct, the Director responded affirmatively, noting that the auditors will not put together the financial statements for the City. The Finance Director continued that the understanding they received from the auditors that they ranked higher was that they know enough about the HTE system [the financial software the City uses] that they could get in and out of the software applications, see what they needed to see, and answer all of their questions without disturbing City staff, which have their regular work to do while the audit is going on. She said they felt CPA Associates' Manager for 15 years was stable, the Partner was going to be involved and on site, and they would be able to solve issues immediately. She said it seemed like a new relationship that would be very professional; contract provisions allow termination at any time.

Council Member Fernandez said she concurs with Council Member Chillura; her audit experience is that partners and managers didn't do work in the field. She said the auditors came in, reviewed their work, and told them what else to do. She said the various functions take a certain amount of time to audit. Reading through this, she couldn't understand how that made such a big difference; also how they could conceivably shrink things in the time frame, restating things just take a certain amount of time.

Council Member Fernandez said in this year when they will need to be cutting things from the budget, she needs to be able to provide justification to citizens for paying more when someone has agreed to charge less. She said reading that a Manager would put in more hours, doesn't do it for her. She stated that is where she needed to see some of her issues with staff interaction versus auditor interaction. She said she knows that auditors are not allowed to prepare documents; staff has to do the work. She said she hasn't heard a good explanation as to how they can conceivably shrink the number of hours on the job. She asked what would happen if they were to go over their budgeted hours.

The Finance Director explained that many times with lower level audit staff, the City staff is training them on how to audit the City's books; whereas, seasoned people know what they are looking for, can identify problems, and quickly drill down to the source. Relative to the fee, the audit firm would be bound to the contract, which says they would not get any more.

Council Member Halloway clarified that independent auditors don't come in to do the City's books, make changes in procedures, or anything of that nature for the City; they come in to inspect the books. Whether or not they did a good job, he said, is a matter of perspective; from Council's perspective, there weren't any significant findings, so it is assumed they must have done a marvelous job; however, they could have done a poor job with the same results.

Council Member Halloway said a peer review committee is the group who passes judgment on whether an auditor does a good job. He shared an analogy as an example, concluding that the City's accounting staff and Finance Director are the ones who have done the work, preparing the financial reports and keeping the records proper.

Relative to the extra principal hours on the job, Council Member Halloway said that "does it" for him. He shared that he was a CPA auditor, explaining that there are certain things that are done in a field audit that require a great deal of training and expertise. He said the more hours the principals can spend on the job, the more the City can be assured that the audit will be complete and correct. He expressed concern that the 12 hours projected by ValienteHernandez for principals on site is not sufficient to do the work in his opinion; McDirmit has budgeted 64 hours, which to him attests to their capabilities to do the job and do it correctly. He continued that all of the firms had good peer reviews, but the Committee believes the choices they made were the best of the lot, adding that the Council should pick the best of the lot and should not let the fact that the other firm did the work last year be the reason to not change.

Council Member Halloway stated that the Council has to recognize an independent relationship with audit firms. He emphasized the auditing firm can have no relationship with the company it is auditing; nothing that can be perceived as a favorable relationship between the auditing firm and the company it is auditing. He explained the importance of having an independent eye looking at the records, as a protection for lenders, investors, and the taxpayers in a government agency, such as the City, ensuring the tax dollars have been carefully protected, well spent, in compliance with the grants awarded, and no one is sticking money in their drawer. He stressed this is crucial, and said he was bothered by the intense lobbying campaign by ValienteHernandez leading up to the decision. He continued that if the Council is perceived to succumb to the lobbying campaign, the independence that ValienteHernandez should have has been damaged. In addition, he said, if the City should ever go out again with bids, very few firms are going to bid, believing that ValienteHernandez has it "in the bag." He felt it was a gross error on the part of ValienteHernandez, specifically when the RFQ stated that the bidding firms will not have contact with Council Members prior to the decision; ValienteHernandez surprisingly violated that provision. In summary, Council Member Halloway stated that the Audit Committee worked hard, went in with an open mind, and was not influenced by who had the job last, wanting only to pick the most qualified firm, and they think they made a good choice.

Council Member Knapp questioned the Finance Director as to how many years the City has received the excellence award for accounting procedures from GFOA (Government Finance Officers Association), how long she has been with the City, how long the former Assistant Finance Director Florence Lewis was with the City, and how long ValienteHernandez has been the City's auditing firm.

The Finance Director responded the City has received the award for 23 years, she has been with the City for two years, Florence Lewis was here 20 years, and ValienteHernandez has been the City's auditing firm for 10 years.

Council Member Knapp said the exact reasons the Finance Director is bringing up are why the City shouldn't change auditing firms. He explained the City has a relatively new Finance Director, and the City has lost a valuable employee with 20 years' experience in Florence Lewis. He continued now they are talking about eliminating a firm with 10 years' experience in working with the City's finances, budgets, and downtown redevelopment, who submitted the lowest bid, and creating a relationship with a brand new firm. He then read the last paragraph from the Memorandum to the City Manager dated June 26, 2007, a copy of which is part of the record, which stated that based on Florida Statutes §218.391(4)(b), Council Members have to provide their reasons if they do not select the highest-ranked qualified firm. He questioned who crafted the statement.

The City Attorney said that is a recitation of their obligation under the law, as adopted by the Florida Legislature. Council Member Knapp clarified his question as to who wrote the statement. The City Attorney said he did not write it. Council Member Knapp said he read it, and perhaps being overly sensitive, took it that if they don't take the Committee's recommendation, they had better tell them why. The City Attorney reiterated it was just a reminder or recitation of their obligation under the Statute; it triggered the requirement for some reasonable commentary on the record. He said he is not aware of any criteria that says what rationales are acceptable or are not, adding he is not aware of any case law; therefore, anything that is reasonable, with a majority vote of the Council, is in compliance with the Statute in his opinion.

Council Member Knapp said he has no particular reason other than the fact that ValienteHernandez has that experience with the City, and the City has been happy with their service for 10 years. He said he doesn't feel change for the sake of change is something that they should do, particularly when things are already shaken up in that department.

Relative to the award, the Finance Director pointed out that the other firms who had applied are also used to being able to get the award, having worked for other government agencies who received the GFOA award. She said that was one of the criteria they looked at. While she has only worked with the City for two years in getting the award here, she said she worked with and helped the City of Leesburg get the award for 16 years. She said it is not simply the auditor; it was all of them working together, and a new firm coming in may be just as good. Council Member Knapp interjected they are proposing to change a "known" for an "unknown."

Mayor Affronti acknowledged there is always a risk when hiring someone new, but through one's experience and knowledge, the risk is minimized.

Upon motion of Council Member Knapp, seconded by Council Member Chillura, **RESOLUTION NO. 061-07(m)** was **ADOPTED**, retaining ValienteHernandez as the City's auditing firm, based on the fact that they have provided 10 years' quality service, have been ranked as one of the three highest auditing firms by the Audit Committee, are capable of performing the tasks, their fee was the lowest bid, and they are a local firm, adding that McDirmit Davis & Co., Inc., is not a local firm. Vote on the motion being: Council Members Chillura, Fernandez, and Knapp voting "aye," with Council Member Halloway voting "nay." Council Member Govin was ABSENT and did not vote.

Mayor Affronti expressed appreciation to the Finance Director and Audit Committee for their hard work.

**City Manager's Report:**

Relative to the alligator situation, the City Manager updated the Council that the representative from the Fish & Game Commission is not available until the August 7 meeting.

The City Manager reminded the Council that just prior to the next Council Meeting on July 17<sup>th</sup>, at 5:00 p.m., there will be a School Concurrency Workshop with all the "major players" in attendance, adding that it will be a very critical meeting.

**New Business:**

**1. Florida League of Cities Voting Delegate.**

Upon motion of Council Member Chillura, seconded by Council Member Halloway, **RESOLUTION NO. 062-07(m)** was **ADOPTED**, appointing Mayor Affronti to serve as the City's voting delegate at the upcoming annual conference of the Florida League of Cities. Vote on the motion being: Council Members Chillura, Fernandez, Halloway, and Knapp voting "aye," no "aye."

There being no further business to consider, upon proper motion, the meeting was adjourned at 8:35 p.m.

Joseph A. Affronti, Sr.  
Mayor

Frank M. Chillura, Council Member

Alison M. Fernandez, Council Member

Ronald A. Govin, Council Member

Ken Halloway, Council Member

Attest:

Mark A. Knapp, Council Member

Melissa E. Burns, MMC  
City Clerk