

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

**Regular Meeting
Tuesday, March 16, 2010
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, March 16, 2010, in the Council Chambers at City Hall.

PRESENT WERE: Mayor Joe Affronti, Sr., and Council Members Alison Fernandez, Ron A. Govin, Ken Halloway, and Mary Jane Neale, City Manager Kim Leinbach, City Clerk Lisa Small, and City Attorney Mark Connolly. **ABSENT WAS:** Council Member Mark A. Knapp.

ALSO PRESENT WERE: Public Information Officer Michael Dunn, Leisure Services Director James Chambers, Public Works Director Joe Motta, Human Resources Director Woody Hubbard, Police Chief Ken Albano, Fire Chief Keith Chapman, Finance Director Diane Reichard, Code Compliance Director Joe Gross, Deputy Police Chief Patricia Powers, Assistant City Engineer Michael Hall, Deputy City Clerk Donna Spano, Housing Officer III Gail Garnier, Risk Reduction Representative Debbie Cunio, David D'Aloia, Joyce McKenzie, Rick Muratti, Luis Mahiquez, Henri Jean, Tom Ash, Kelly Ryman, and several other persons.

Following an Out-of-Sunshine Meeting regarding pending litigation, which convened at 5:00 p.m. and terminated at approximately 5:45 p.m., Mayor Affronti reconvened the City Council Meeting, calling it to order at 6:00 p.m., after which he led the Pledge of Allegiance to the flag and offered a brief invocation.

Proclamations, Recognitions, and Special Presentations:

Mayor Affronti announced that the Proclamations listed on tonight's agenda were intended for the April 6th meeting and inadvertently listed on tonight's agenda; the recipients will be present at the next meeting to receive the Proclamations.

Minutes of Previous Meetings:

Upon motion of Council Member Halloway, seconded by Council Member Neale, and unanimously carried, the **MINUTES** of the March 2, 2010, Council Meeting were **APPROVED**. Council Member Knapp was **ABSENT** and did not vote.

Persons Wishing to be Heard on Items NOT Listed on the Agenda:

Grant Rimbey, 411 Island Road, addressed the Council regarding previous Council discussions concerning rewriting the City Codes. He reviewed that former Community Redevelopment Director Ralph Bosek eloquently presented the reasons for a new City Code - specifically a Form Code for the downtown redevelopment area and a rewrite of the City's Land Development Code - at the January 16, 2007, City Council Meeting. He mentioned that former Director Bosek went into great detail, emphasizing that Code development is one of the cornerstones of the future of our City.

Mr. Rimbey recalled that in 2007 the efforts to write a Form Code and rewrite the Land Development Code were put on hold, rather than terminated. Mr. Rimbey suggested consideration should be given to keeping it on the back burner for now, because of economics, and pursuing it at some future point. He presented highlights from the January 16, 2007, City Council Meeting:

- Council consensus was that the City Code was in need of rehabilitation, because it is outdated and ambiguous;
- Two major issues were timing and cost;
- Council Member Chillura recommended proceed with rewriting the Code once they deal with the Developer and have a plan they know will work – he was not opposed to going forward, but at the right time;
- Discussed formation of an advisory committee. Mr. Rimbey expressed his belief that they were talking about a committee who would advise the expert Code-writing team and then come back to City Council with recommendations. He continued that he hopes that an advisory committee would be multi-disciplinary and include planners, architects, engineers, local business people, and City leaders.

Mr. Rimbey mentioned that the Preservation Society has a copy of the City Code from the 1950s, which is a small pamphlet, based on Tampa's Code, which was put together so that the housing boom of the 1950s and 1960s would not foster inferior housing that harmed property values. He suggested that subsequent revisions of the Code have been added onto that Code, with little attention given to the "bigger picture" as to what works comprehensively for the City. Regarding the Code being referred to as a "living document," he said it is more like Frankenstein – partially living.

Mr. Rimbey stressed the need for a true Form-Based Code for the downtown redevelopment area, commenting that the current interim Code was a stop-gap measure to prevent a moratorium on building in the redevelopment area while the Form Code was completed. He briefly reviewed other areas that now have a Form Code or Form Code overlay, pointing out the irony that the concept of a Form Code was introduced in Hillsborough County in 2004, in Temple Terrace, as part of the redevelopment charrettes, and everyone else has taken advantage of the City's hard work. He commented that while Phase 1 of the Southeast Quadrant is basically a "done deal," there are Phases 2 and 3 and the other three quadrants of the 225-acre redevelopment area, and he is hopeful that a Form Code could be in place to reflect what will happen in those areas.

Regarding the Land Development Code, Mr. Rimbey commented that the City Attorney mentioned there are many areas of the Code needing work, such as signage. Mr. Rimbey noted that another example would be accessory structures, which have kept his firm alive during this economic climate. He commented that many of the City's 1920s homes have detached accessory structures as servant's quarters; those structures have been basically illegal since the 1950s Code was created, but the typical lot sizes of 100 x 200 would be perfect for such structures and could be a great stimulus for the local building industry, making better use of the large yards. He summarized that is one example of how the Code could be updated to better reflect Temple Terrace today.

Mr. Rimbey said the City may not have the money for a Code rewrite now, affirming this is not a do-it-yourself project that Community Development could or would want to do in their spare time. Whatever is done, Mr. Rimbey remarked that it will need to be done comprehensively, thoroughly, and legally, and he advocated hiring an expert consultant team to do the work.

Mr. Rimbey suggested that the City consider splitting the project into two parts – the Form Code and the Land Development Code, adding his belief that pricing would be better today than it was in 2007. He said he concurred with fellow Redevelopment Task Force Member Alex Ratensky's evaluation of the original Clarion proposal, that it was flawed, vague as to work-product, way too costly, open-ended, and did not reflect the work previously done. Concluding his remarks, Mr. Rimbey said he knows the City can and should do better, stressing that the best time to update a Building Code is when there is not a lot of construction, which is now.

There were no public hearings before the Council; there was no correspondence, communications, or petitions.

Presentations:

1. Environmental Protection Commission – Fertilizer Rule Briefing.

Mayor Affronti introduced the topic of the presentation and those persons scheduled to present information. Code Compliance Director Joe Gross reviewed that over the last few months staff has been reporting to Council concerning Senate Bill 494, which passed last Session and requires local governments with impaired waterways to adopt some type of regulation to control nutrients. He continued that for the past few months, City staff has been working on this issue with other jurisdictions in Hillsborough County. He explained that an EPC (Environmental Protection Commission) Rule is being contemplated to address the issues and meet the State requirements. Because two of the three workshops the EPC is conducting were held on the day of the last City Council meeting, he thought it would be helpful for EPC staff to present an overview to Council. He added that EPC Executive Director Dr. Richard Garrity was unable to be here this evening; however, Water Management Division General Manager Tom Ash and Assistant Counsel Rick Muratti are present.

Mr. Ash stated that they wanted to make sure that all of the municipalities are informed about this process. He explained that it is their belief that the neatest, cleanest, and most comprehensive way to address the issue is by the adoption of an EPC Rule that would include all of the municipalities and unincorporated Hillsborough County. He continued that since March 2, 2010, they have had two of three planned workshops that were directed by the EPC Board, and they are "full blown" into data gathering, compiling information from the public, industry, and environmental sides of the issue. He said they hope to have one more workshop on March 31, 2010, and then wrap up the information gathering phase. He indicated to Council that sometime in April they anticipate requesting a public hearing date from the EPC Board and then go forward from there. He concluded that the Council was provided with a copy of their informational PowerPoint presentation in their agenda packets, a copy of which is part of the record.

Mayor Affronti asked Mr. Ash to briefly explain the objectives of their meetings for those who may not have the opportunity to read the information provided.

Mr. Ash explained that Senate Bill 494 created Florida Statutes §403.9337, effective July 1, 2009, that requires all local governments with nutrient impaired waters to adopt what is known as the "State Model" Statute for fertilizer use within the State of Florida.

Mr. Ash continued that the State Rule allows for local governments to adopt an even stricter rule, if certain criteria are met - the rule must be stricter than the State, and there is valid, scientific, and economic justification for doing so. He said the EPC believes they do meet the criteria, and the Estuary Program, the EPC, and other local partners, who collect water quality data throughout Tampa Bay and its tributaries, have enough data and reasonable science to assume that without such a local rule, more surface water impediments can be expected in the future. He explained they are trying to be pre-emptive, with the State Rule coming down, get their own local rule in place that they believe will help all local municipalities address the mandates.

Council Member Fernandez commented she believes that the public at home may not understand all the acronyms and would simply like to know how this specifically affects them and their lawn treatment.

Mr. Ash responded the current rule as it stands has two key components, being a purchasing blackout period during the summer months and an application ban during that same time period, June 1 through September 30. He clarified that during the rainy season individuals would be unable to purchase fertilizer or apply it to their lawns. He explained the reasoning is that during the rainy season, their data suggests that runoff from lawns, particularly residential, causes nutrients in the Tampa Bay and its tributaries to spike. He said the idea is to preempt that runoff by not applying; the "take-home" message is if they can prevent the pollution from entering the water to begin with, it is a lot less expensive in the long run for everyone than to allow the pollution to continue and have to clean up after it has occurred.

Council Member Govin asked whether this would apply to ALL fertilizers during that period. Mr. Ash responded it would not; they are working through rule development right now and have received lots of input from the industry side – those who make fertilizer and those who apply it in lawn-care, as well as environmental folks. As this information comes in, he said they will continue to develop the rule to get it as close as possible to what everyone can live with.

Council Member Govin asked whether the State Rule bans all fertilizers during that period, to which Mr. Ash responded no, adding that the State Rule has provisions for licensed applicators to apply fertilizers during that time.

Commenting that when they fertilize their lawns, they have to water it down, Council Member Halloway asked whether that means they cannot water down their fertilizer. Mr. Ash responded that during the summer, they would not want to put fertilizer on it to begin with, so there would be nothing to water down. Council Member Halloway commented that his lawn care persons fertilize his lawn approximately every three months. He asked whether that would be prohibited. Mr. Ash said they would suggest that the rule would prohibit application of the fertilizer between June 1 and September 30. Council Member Halloway questioned whether the State is going to appoint a Fertilizer Czar to enforce the rule or how would it be enforced. Mr. Ash responded that the key for them is to focus on the educational aspects and not on enforcement, believing that most people want to do the right thing, but don't know how or don't know they are harming the environment. He said they believe the key will be front-loaded, hard-core education for a year before the rule would take effect.

Mayor Affronti questioned whether licensed applicators would be able to apply fertilizer any time or whether they would be restricted.

Mr. Ash responded that under the current State Rule they are allowed to apply fertilizer any time; the current draft of the local EPC rule states that both licensed applicators and homeowners would have the four-month rainy season (summer) ban from purchasing and applying.

Council Member Fernandez said it was her understanding that it was primarily the nitrate-based fertilizers and that there were alternatives to be used, if need, during the rainy season; secondly, she said there was scientific evidence that applying fertilizer during certain times, such as the rainy season, actually caused damage to lawns and made it more susceptible to insects and other pests. She questioned whether that was true. Mr. Ash responded there are scientific arguments on both sides; the rule is primarily focused on nitrogen and phosphorus-based fertilizers.

Council Member Fernandez said she is not a fan of enacting an ordinance that is unenforceable, but she is a fan of education. She questioned if a change in behavior does not come about, whether the City or residents of the City would be fined – what the end result would be. Mr. Ash responded there are a number of different options; the most important one is knowing that Senate Bill 494, the State Model Ordinance, will take effect one way or another. He explained the reason for the rule is that the cities can either do it on their own, or in their case, as a community within Hillsborough County; they believe this is the best mechanism that encapsulates all of the municipalities and Hillsborough County at the same time. He said the local government can adopt something stricter or go along with the EPC Rule; if the City was to opt out it would have to take on the burden of complying with the State Model Ordinance anyway. Mr. Ash acknowledged they may not see a huge improvement, but they would hope that the implementation of the EPC Rule would show less degradation.

Council Member Halloway suggested it may put a lot of lawn service people out of business and add to the unemployment rolls.

Mayor Affronti thanked Mr. Ash for the presentation.

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

Resolutions for Consideration and Action:

The City Manager briefly reviewed the eight (8) proposed Resolutions for consideration and action.

Council Member Fernandez asked that **Resolution E-5** be pulled for further discussion.

Council Member Govin questioned Resolution E-1, in that the firm selected did not appear to be the lowest bidder. Public Works Director Joe Motta responded this was a ranking and there were no bids; the firm recommended for selection was the firm ranked as number one. Council Member Govin acknowledged he had mistaken that for a price.

Council Member Govin commented that Resolution E-2 does not give the source of the funding and whether it was budgeted.

The City Manager acknowledged the omission and confirmed it was included in the Capital Improvement Fund, adding that all of these proposals are in the current fiscal year budget. He said it was in the cover memo, but should have been delineated for clarity. Council Member Govin confirmed it was an oversight; the City Manager said it would be more clearly stated in the future, reconfirming the funds are available and budgeted for this use.

Council Member Govin noted the same situation occurred with Resolution E-3. The City Manager responded that is funded through gas, and is also provided for in the budget. He reiterated it will be more clearly stated in the future. Council Member Govin said they are generally clearly stated as budgeted for; however these two were not, so he wanted to be sure.

Upon motion of Council Member Halloway, seconded by Council Member Fernandez, and unanimously carried, **Resolutions E-1 through E-4 and E-6 through E-8** were adopted by consent (Council Member Knapp was ABSENT and did not vote), as follows:

RESOLUTION NO. 030-10, approving the three-year continuing contract between the City and Tierra, Inc., to provide geotechnical/environmental engineering services.

RESOLUTION NO. 031-10, awarding the contract to rehabilitate Master Wastewater Pump Station E to the low bidder, RTD Construction, Inc., in the amount of \$295,933; payment for said contract to be made from account 450-1931-535.63-33.

RESOLUTION NO. 032-10, awarding the contract to resurface Richlyne Street North and Rivergate Place and resurface and mill Telecom Drive to the low bidder, Tampa Pavement Constructors, Inc., in the amount of \$198,996; payment for said contract to be made from account 130-3301-541.63-11.

RESOLUTION NO. 033-10, continuing the two-year agreement between the City and LarsonAllen LLP to provide auditing services through the fiscal year ending September 2011; payment for said agreement to be made from account 001-1212-513.32-11.

RESOLUTION NO. 034-10, awarding the contract to landscape and irrigate two medians on 56th Street between 113th Avenue and Fowler Avenue to the low bidder, Superior Landscaping and Lawn Services, Inc., in the amount of \$38,174.46, with payment for said contract to be made from account 001-1892-572.61-19; further, approving the adjustment of the 2009-10 budget accordingly, to appropriate and allocate the funds.

RESOLUTION NO. 035-10, rescinding Resolution 017-10, recommending approval of the Tampa Hillsborough Economic Development Corporation's Project 08-007 as a Qualified Applicant to Florida's Qualified Target Industries Tax Refund Program.

RESOLUTION NO. 036-10, recommending the Tampa Hillsborough Economic Development Corporation's Project No. 08-007 be approved as a Qualified Applicant to Florida's Qualified Target Industries Tax Refund Program and providing, over the next six years, for Fiscal Years 2012-2018, up to \$104,800 of local support for a corporate relocation that will create 131 new jobs; and providing an effective date.

Regarding Resolution No. E-5, Council Member Fernandez commented she believes they needed to have more public discussion about this item, because of the large dollar amount and because it is in the downtown redevelopment area and is the City's first cash infusion of this project with regard to the Developer. While she has all of the background information, she said the public does not.

The City Manager stated this Resolution is in compliance with the Master Developer's Agreement between the City and Vlass Temple Terrace, where the City has agreed to finance up to \$4 million of specific improvements for the downtown redevelopment in the Southeast Quadrant. He explained they are asking for authorization to go out for proposals for financing, essentially based upon three years at a variable rate. He continued that they wanted to make sure the improvements were underway and that it was necessary to borrow the money, which is like having a line of credit. He said they did not want to borrow \$4 million right up front and have to pay interest on that; they are seeking a line of credit at a low variable interest rate, which will convert to a fixed rate once the improvements are about finished. He called on the Finance Director to add to the explanation.

Finance Director Diane Reichard explained the administration received a project schedule from Mike Lant, which indicated they are hoping to begin construction in July; in order for the City to have the money available by July, she said they need to start the process now. She confirmed the City Manager's comments that they are seeking a low variable rate, converting to a fixed rate at a later date. She said the other option they added was a provision that if they see that interest rates are rising, they can convert to a fixed rate prior to spending all of the \$4 million. She continued that at this point, it appears the City does not need the money by July, so they may delay going to RFP (Request for Proposals), but they would have Council's approval to utilize this RFP process, when they are ready to put it out to bid. She explained they would come back to Council for a vote on the entity they recommend for selection.

Mayor Affronti confirmed with the Finance Director that the Council has already voted to spend the money; this is asking to go out for RFP to get the best possible rate on the loan.

Council Member Holloway commented this is a contractual agreement that the City needs to fulfill; otherwise the City will be breaching the contract and will be subject to a lawsuit and damages, killing the project totally, and they would not be able to start up another project; it would bankrupt the City. He reiterated it is a contractual agreement that the City needs to fulfill, and the Resolution tonight is to provide a means to fulfill the agreement.

Council Member Govin said he has qualms with it because the developer has already spent eight or nine months, and by the developer's own admission, the developer told them that if he is not in the ground before two years, chances are he will not get done.

Council Member Govin expressed concern that the City is in a tough time and may lose another \$1.2 million in ad valorem in the coming year; financially the City has its hands full, having provided no raises in three years, with very few exceptions. He stressed the City should have a benchmark by the developer, suggesting that in the Master Developer's Agreement there must be some benchmark stating the developer had to do certain things. He said he hasn't seen anything done, other than talking and negotiations. While he understands some of that must occur, he said in the meantime the City has been paying the developer half its rent - and now it is going to be the first to make a commitment for money.

Council Member Govin questioned whether the administration has seen the developer's commitment yet – a validation that the developer has gotten a commitment from a bank or wherever they obtain that kind of funding. He acknowledged that contractually the \$4 million has to be done, but expressed his belief that for the City to make a commitment before the developer will not put any urgency into this process. He said he prefers that this be put off until the developer puts money on the table. He said he believes the City can find money within two weeks, at least to the point of commitment. He mentioned there are people in the City who own property and are suffering, with tenancy around 75% of what they have had in the City for over 20 years. He reiterated his belief that this request is too early for the City to be doing, and until they see some kind of benchmark – and he would like to know what that would be - he recommends they do not go forward, and he will not vote to do so.

Mayor Affronti clarified that all they are voting on tonight is to go out with an RFP to see which bank will offer the best rate on a \$4 million loan. The Finance Director interjected that she learned after submitting the Memorandum for the Agenda package that the developer may not be able to start construction as early as previously indicated; therefore, she would not “pull the trigger” to do the RFP until the developer is ready to go. As an example, she said if the developer is not going to start until January, she will wait until January; however, she wanted the Council to realize that the City is spending money now for design as things go forward, and if they reach \$200-\$300,000, rather than get the City in a bind, she would want to proceed with the RFP. She requested permission, affirming she would wait as long as possible and that when the results of the RFP come back, the Council will be presented the information for a vote to select the bank with the best rate.

Mayor Affronti confirmed with the Finance Director that the Council has already committed to the \$4 million; now they only have to commit to the loan, which will come back to Council for a vote.

Council Member Govin said he understands exactly where they are and that they are going to do this if and when a benchmark is achieved by the developer. He continued that he does not believe any benchmarks that have any meaningful notice by the community have been achieved at this time, adding that citizens keep asking when something is going to happen. He repeated his belief that it is too early, and they need to look for a benchmark. He expressed concern that if the City commits itself to a line of credit, the City will have difficulty borrowing more money for the City, should the need arise, citing concern for the same problems they faced last year during the budget process, with funding to operate the City being more than the City has, such as being unable to offer raises and having to continue cutting employees. He cited the example of an individual opening another credit card account, which negatively affects their personal credit score. He expressed strong concern that the City may become a big credit risk if they announce to the banking community that the City wants a \$4 million Line of Credit. He said he doesn't believe that is a good approach and should not be done until the time is right.

The Finance Director interjected that she concurs now is not the right time; she just wanted to make sure that the Council is in agreement with the style of the RFP that will be submitted, adding that it may be nine months from now before they “pull the trigger.” Council Member Govin gave his word of honor that if and when the benchmark is met and the need is there, he will vote for this, adding that he does not need to be convinced again.

Council Member Holloway reminded the Council that if they breach the portion of the contract that says the City is liable for \$4 million, they won't have a City to operate. He encouraged the Council not to “dink around” with this; the Finance Director needs time to do this and all the administration is doing is going out for an RFP.

The City Manager remarked that he planned to report on the downtown redevelopment project later in the meeting; however, if allowed, he would proceed. He reported on a recent staff conference call with the Vlass team. While he does not have anything in writing at this juncture, he said they believe the lease with Sweetbay is basically finished; in addition, the City received word that the Post Office will be relocating in the redevelopment area. He stated that he believed those were two impediments to Vlass going forward; he is under the impression that the Vlass team is proposing to begin construction yet this year, which may entail remodeling Sweetbay and the Post Office. He said that was their first opportunity for a lengthy call, due to the trial that concluded last Friday [March 12, 2010]; during the conversation they discussed the site plan process and how to get things going. He commented that like everyone in the community, they all agree they want to see work begun as soon as possible; they have waited a very long time.

Mayor Affronti commented that he believes the Vlass team's objective is to have the Sweetbay renovations done by the holidays this year, which means they would have to start within 90 days.

Council Member Fernandez said she realizes this \$4 million is part of the contract; she does not have an issue with that. She said she has to agree with Council Member Govin's concern about the City putting out money first; Council has to be sure to safeguard the City's assets. She acknowledged that the areas the City's money would be used for are spelled out in the Master Developer's Agreement, and that includes infrastructure work that can be done with nothing else done around it, which is one concern. She said her other concern is how Vlass comes to the City for reimbursement and how the City verifies the expenditures. She expressed her belief that it is too soon to prepare for having the loan, believing the City's funds would be the first tapped, and she wants them safeguarded.

The City Manager responded he believes a "trigger" mechanism would be that once Main Street is shown to the City, the developer will be obligated to tear out where the Post Office is now and also the businesses located there. In terms of the payment process, he stated that the Public Works Director has set up a system with the Finance Director, whereby any invoices and work will be reviewed to assure the work is done to client specifications and that the request is justified, and of course, the math is always checked.

The Finance Director shared that all revenues from ad valorem taxes are on track as budgeted, and the TIF income is exactly as budgeted. She said the estimated rental income was \$447,000 for the year, and even though the City is only receiving half of the revenue, it is right on track with receiving that much revenue. She continued that the interest expense is lower than what was budgeted, because the market is still down, so the City is gaining on that. She said originally they were going to have \$275,000 to apply towards debt; they were able to use that money in the redevelopment, and to summarize, even though employees may not get raises, etc., the redevelopment section is being able to be managed as budgeted.

Council Member Govin said they just mentioned some great benchmarks; he would love for staff to come back with the benchmarks and once they cross them, for staff to say they believe they should go forward with this. He said he would be happy to support something of that nature.

Council Member Neale clarified they are voting to give staff permission to go out for bids; they are not borrowing any money, but are just looking to see what is out there to determine the best way to go.

Council Member Fernandez questioned whether the developer would need to have a site plan approved in order for the City to know what infrastructure work was needed and the associated cost. The City Manager responded affirmatively, because the City would need to know the layout of the water lines, sewer lines, and streets. She rhetorically questioned that the City would know very early in the process that a site plan was in the works and suggested that would be the best time to go out with an RFP for financing; it would be clear the project was going forward, and in the time it takes to approve a site plan, they could find the necessary financing.

The Finance Director responded that she believes they all agree on that subject; she doesn't want to go in debt today. She explained that when the original memorandum was submitted she thought the developer was ready to go, but they are not ready. She said they need the site plan and need to be assured that the road will be built. She continued that all she was trying to do was make sure the *format* of the RFP was acceptable to the Council. She questioned whether they want her to bring it back to them again for approval before putting it in the newspaper, which she would be happy to do, or whether they would agree to approve the format today, with the understanding that it won't be sent to the newspaper until the "trigger" mechanism is pulled. She noted that it took her two weeks to get the item on the agenda; when they are ready to pull the trigger, she doesn't want to miss a deadline. She noted they have to come back to Council with the results of the RFP before proceeding.

Upon motion of Council Member Holloway, seconded by Council Member Neale, **RESOLUTION NO. 037-10** was **ADOPTED**, approving the request for proposal to finance up to \$4,035,000 for the downtown redevelopment project's design, redesign, engineering, permitting, and "Main Street" construction. Vote on the motion being: Council Members Fernandez, Holloway, and Neale voting "aye," and Council Member Govin voting "nay." Council Member Knapp was ABSENT and did not vote.

There were no Proposed Ordinances for Consideration and Action.

Unfinished Business:

1. Residential Rental Permit Program.

The City Manager commented that this item was discussed at the last City Council Meeting and the administration was directed to provide a report with regard to the Residential Rental Permit Program, a copy of which is included in the Council packet and is part of the record. He asked Fire Chief Chapman to review the report with the Council.

Fire Chief Chapman summarized the information provided to the Council, explaining that the program was enacted in 2005, with the objective of reducing the frequency of poorly maintained rental property within the City, thereby increasing the value of the housing stock within our City. He said a breakdown to show the number of rental properties within the City was provided to Council, not necessarily ones that are currently renting, but including properties waived or exempted from the ordinance and/or registered with the rental housing program, and including the ones that are actively renting and permitted. He pointed out the largest group are condominiums at 1,527 units, single family homes comprise 1,025 units, townhomes/villas (which could be included in condominiums) make up 146 units, and duplexes and triplexes make up the smallest segment with only 22 units.

Fire Chief Chapman advised that they also provided a breakdown of the financial numbers for the program, stating that the program was initially designed to be a self-supporting program. He noted that the current fiscal year will be the first year that the program will be completely self-supporting. He said the expenses shown in the report include the salaries of the three employees currently working within the Residential Rental Permit Program in the Housing Department, as well as operational expenses; for example, they were previously paying rents in the La Beacon building before moving to City Hall.

Fire Chief Chapman continued that the Council had also asked for information concerning surrounding agencies. He reported that neither Hillsborough County nor the City of Tampa currently have Residential Rental Permit Programs. Hillsborough County had a program at one time that was developed to include enforcement and inspection of apartment complexes, but because apartment complexes are regulated and inspected by the State of Florida, the State took issue with Hillsborough County's program, and as a result, Hillsborough County terminated the program. He said there are a number of agencies throughout the state and the country that do offer Residential Rental Permit Programs.

Fire Chief Chapman remarked that the administration is presenting a recommendation regarding late fees. He explained that the late fee schedule adopted as part of the ordinance in 2005 was very robust; the administration is recommending that the schedule be revised to make it more consistent with other programs in the City. He explained the recommendation is to assess a \$100 late fee after 30 days of the first notice; at the end of the 60-day notice, if the original fee of \$200 is not paid along with the \$100 late penalty, it would be issued a Notice of Violation, just as they would do on a property that is renting without a permit, and it would be referred to the Municipal Code Enforcement Board, through which fines would be assessed under their formal process. He explained the other recommendation had to do with the fact that it would be very difficult, if not impossible, to increase the value of the housing stock and make sure that these properties that are not owner-occupied maintain minimum housing code standards if any of those segments of properties are eliminated from the program. He said one of the things Council will notice in the attachment that was provided to that Council Meeting, to provide background concerning the discussion, was that the Fire Chief at the time had predicted that about 30% of the properties entering the program would need a second inspection. Fire Chief Chapman said that prediction was far lower than the 80% and higher rate that need the second inspection, due to the properties failing to meet minimum housing standards upon the first inspection. He said they believe they are making a difference and increasing the value of the housing stock.

Council Member Govin asked whether they are planning to rework the fee schedule, to which Fire Chief Chapman responded affirmatively; if the Council gives direction to do so, he will meet with the City Attorney to develop draft language to amend the ordinance, which will come back to the Council for approval.

Mayor Affronti called on David D'Aloia, 919 N. Riverhills Drive, to address the Council regarding the City's Rental Housing Permit Program. Mr. D'Aloia commented that although it may be good for the City, he doesn't believe they can say values in Temple Terrace have gone up because of the program. He remarked that Code Enforcement makes everyone have painted houses and their grass mowed. He said his biggest concern is the amount of money for the permit. He commented that Hillsborough County lost a lawsuit because their permit was not "just"; when Hillsborough County did have a permit program, their permit fee was \$35. He questioned the cost of the permit for the City of Tampa, to which the Fire Chief responded they don't currently have a Residential Rental Housing Permit Program.

Mr. D'Aloia said they used to have a program and he thought the permit was \$35. Mr. D'Aloia asked the Council to consider that the permit pays for someone to walk in and inspect the unit for minimum housing standards; it doesn't take that long. Going back to those houses every year, over 10 years, Mr. D'Aloia questioned how much the City would tax the municipality and spend on bigger government; it is typical "tax and spend," taxing constituents at a very high rate and building bigger government. He rhetorically questioned whether it is helping the City and answered affirmatively that perhaps it is a little bit, but he questioned the fairness of taxing a duplex \$200 per unit, which is \$400 per year. He said he spends a \$1,000 per year for this program for someone to come check his smoke detectors. He asked the Council to reconsider the amount of the annual permit fee, stating that \$35 is the typical fee and \$200, in his opinion, is out of line.

Council Member Govin recommended that Mr. D'Aloia be given a copy of the report that was provided to the Council, since Mr. D'Aloia had initiated the request. The City Manager concurred.

Council Member Fernandez questioned how the fee was devised, since she was not on Council at that time and it did not pay for itself for several years.

The City Manager responded that it was based on anticipated expenditures when the program was initiated. He noted there was quite a lot of debate, as evidenced in the minutes of those meetings. He commented that a fee of \$500 was suggested by some, but it was not considered reasonable; \$200 was determined reasonable by the Council at that time and thought to be sufficient to cover the personnel costs of going out into the field. He said he was not familiar with what other jurisdictions do, but he knows that going into the homes and inspecting them time and again is very costly, and the City only has three people who cover the entire City. He explained this is the first year that they anticipate breaking even, after having an approximate \$450,000 deficit up to this point while getting the program underway.

The City Manager commented that the City has a Housing Rehabilitation Program and emphasizes housing stock; while it may not increase the value of the housing stock, the Residential Rental Housing Program protects the homeowners. He recalled discussions at the outset of the program that owner-occupied properties take more pride in and better care of their property, generally speaking. He explained this was a means to try to offset that tendency of renters. Believing it to be a good program that has done well for the City, the City Manager suggested they provide the Council and Mr. D'Aloia with a periodic report; while they are showing a slight benefit this year, if it turns out to be more, the administration will come back to the Council and suggest a reduction in the fee.

Council Member Fernandez questioned whether there is a way to actually reduce the expenses of the program or if they are at the limit.

Fire Chief Chapman responded that they have four employees who work in the Housing Department, one of which is completely funded by a grant through Hillsborough County HUD [Department of Housing and Urban Development]. He explained that they eliminated paying rent for their space by moving into City Hall, they have two vehicles that are used in the program, and operating expenses, such as paper, mailing costs, and postage. Other than employee salaries and benefits, he said there is not a lot to eliminate to maintain the program as it is.

Fire Chief Chapman commented that it is a very complicated program to administer, because they have to identify the rental properties in the City, track down the owner, verify whether there is a waiver or exemption, get them through the permit process, collect the fee, and then get them through the inspection, all of which requires considerable communication with the property owners, some of whom are located all over the world, requiring international communications. He restated he is not aware of any expenses that could be eliminated or lowered.

The City Attorney clarified that the direction, if Council concurs, would be for his office to work with Fire Chief Chapman's office to modify that part of the ordinance with respect to the late fees, by adopting the recommendation of staff with respect to late fees, assessing a late fee in the amount of \$100 and otherwise, handling it through the Municipal Code Enforcement Board.

Upon motion of Council Member Govin, seconded by Council Member Fernandez, **RESOLUTION NO. 038-10 (m)** was **ADOPTED**, directing that the City Attorney work with staff to amend the Residential Rental Housing Permit Program ordinance with respect to late fees, by adopting the recommendation of staff with respect to late fees, assessing a late fee in the amount of \$100 and otherwise, handling it through the Municipal Code Enforcement Board. Vote on the motion being: Council Members Fernandez, Govin, Halloway, and Neale voting "aye," no "nay." Council Member Knapp was ABSENT and did not vote.

City Manager's Report:

Stating he had already given his report earlier, the City Manager deferred to the City Attorney.

Before proceeding, Council Member Govin distributed information to the Mayor and Council on the new HART FLEX program, noting the official brochures have not been printed yet; these are one-time copies that reflect how the system will work in the Brandon area. He reviewed from his previous report on the FLEX program, that once funding is available, HART FLEX is proposed to be implemented in Temple Terrace. He commended the concept, stating it will provide City transportation on the interior streets, bringing those residents out to an area where they can catch one of the regular bus routes.

The City Attorney first briefed the Council regarding recent issues raised with regard to other jurisdictions in Florida about whether it is appropriate to have prayer at public meetings. He read excerpts from the 1983 decision by the United States Supreme Court in Marsh vs. Chambers, where the question was whether the Nebraska Legislature's practice of opening each legislative day with a prayer by a Chaplain paid by the State violated the Establishment Clause of the First Amendment. He paraphrased that the Court explained this unique history leads up to accept the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause of the Constitution arising from a practice of prayer similar to that now challenged; they concluded that legislative prayer presents no more potential for establishment than the provision of school transportation, beneficial grants for higher education, or tax exemptions for religious organizations.

The City Attorney summarized that Case Law coming down since that time indicates any prayer by a governmental body must be non-denominational, which the City's is, so that the City is not advocating one religion over another religion. The City Attorney concluded by saying that to the extent any of them have been approached by individuals who are questioning whether the City's practice of opening the Council Meetings with a prayer is appropriate, it certainly is appropriate according to the United States Supreme Court.

The City Attorney updated the Council concerning the Kenneth and Suzan Tozier and ICW litigation matter, reviewing that the lawsuit began in April of 2003 after the City of Temple Terrace denied a site plan at a City Council meeting held in March of 2003. He continued that the First Appeal in that case was decided in April of 2005, where the Second District Court of Appeals said that the City of Temple Terrace and cities throughout the State generally can put reasonable conditions on the vacation of a right-of-way. The City Attorney commented that in October of 2009, the trial began, there was a lengthy “lay-over” until March of 2010, and the trial concluded last Thursday. At the end of the Plaintiff’s case in chief, he said there is the right of the defendants to make a motion to dismiss on the basis that the Plaintiff has not established the prima facie elements of the claims.

The City Attorney reported that the Court agreed with the defendants and at the end of Plaintiff’s case in chief, the counts for tortious interference with contract, denial of due process, and conspiracy to deny constitutional rights were all dismissed by the Court. He continued that as a result of that ruling, now before the Court for consideration are the following: breach of contract, equitable estoppels, breach of duty of good faith and fair dealing, and taking without due process. He noted that depending on how busy the Court is, they likely will not get a ruling for at least six weeks, and it could be several months. He commented that his partner, Phil Campbell, and he feel very good about the case; the witnesses who testified at trial, whether called by the City or by the Plaintiffs, included a number of former City employees and officials, including Community Development Director Mike Delk, and Council Member Frank Chillura, who both spent quite a bit of time reviewing minutes and video tapes of meetings to re-familiarize themselves with all aspects of the case, Mayor Affronti, and City Manager Leinbach. The City Attorney stated they believe they all testified very consistently and in accordance with what actually happened in this matter; consequently, the City’s trial counsel feel very good about the City’s chances, and as soon as they receive some sort of ruling, they will advise the Council.

Council Member Halloway was gratified to no longer be considered a conspirator, to which the City Attorney commented he was grateful when the individual defendants were out of the case about a year ago; there were a lot of allegations made, but they believe the evidence bore out what actually occurred.

There being no New Business and no further business to be considered, upon proper motion, the meeting was adjourned at 7:17 p.m.

Joseph A. Affronti, Sr.
Mayor

Alison M. Fernandez, Council Member

Ron A. Govin, Council Member

Ken Halloway, Council Member

Attest:

Mark A. Knapp, Council Member

Melissa E. Small, MMC
City Clerk

Mary Jane Neale, Council Member