

**MINUTES  
ORMOND BEACH CITY COMMISSION  
HELD AT CITY HALL COMMISSION CHAMBERS**

---

**August 5, 2015**

**7:00 p.m.**

**Commission Chambers**

---

Present were: Mayor Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager and Public Works Director Ted MacLeod, City Attorney Randy Hayes, and City Clerk Scott McKee.

**A G E N D A**

- 1. CALL TO ORDER**
- 2. INVOCATION**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PRESENTATIONS AND PROCLAMATIONS**
  - A. Presentation to Ormond Strong
- 5. AUDIENCE REMARKS - REGARDING ITEMS NOT ON THE AGENDA**
- 6. APPROVAL OF MINUTES**
  - A. The Minutes from the July 28, 2015 City Commission Meeting will be available for approval at the August 18, 2015, City Commission Meeting.
- 7. COMMUNITY REDEVELOPMENT AGENCY**
  - A. **RESOLUTION NO. 2015-153** : A RESOLUTION OF THE CITY COMMISSION, ALSO ACTING AS THE COMMUNITY REDEVELOPMENT AGENCY, OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION UNDER THE BOATING INFRASTRUCTURE GRANT PROGRAM FOR FUNDING ASSISTANCE RELATIVE TO CONSTRUCTION OF A PUBLIC DOCK AT CASSEN PARK; AUTHORIZING THE EXECUTION OF ALL DOCUMENTS INCIDENTAL THERETO, INCLUDING ANY CONTRACT NECESSARY FOR THE CITY TO ACCEPT THE GRANT AWARD; AND SETTING FORTH AN EFFECTIVE DATE.  
  
**Staff Contact:** John Noble, City Engineer (386-676-3269)
- 8. CONSENT AGENDA**

The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.

  - A. **RESOLUTION NO. 2015-153** : A RESOLUTION OF THE CITY COMMISSION, ALSO ACTING AS THE COMMUNITY REDEVELOPMENT AGENCY, OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION UNDER THE BOATING INFRASTRUCTURE GRANT PROGRAM FOR FUNDING ASSISTANCE RELATIVE TO CONSTRUCTION OF A PUBLIC DOCK AT CASSEN PARK; AUTHORIZING THE EXECUTION OF ALL DOCUMENTS INCIDENTAL THERETO, INCLUDING ANY CONTRACT NECESSARY FOR THE CITY TO ACCEPT THE GRANT AWARD; AND SETTING FORTH AN EFFECTIVE DATE.  
  
**Staff Contact:** John Noble, City Engineer (386-676-3269)

- B. **RESOLUTION NO. 2015-154** : A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ORMOND BEACH, FLORIDA AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$2,600,000 IN PRINCIPAL AMOUNT OF ITS WATER AND SEWER REVENUE BOND, SERIES 2015, FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND ACQUISITION OF CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; DETERMINING CERTAIN DETAILS OF SAID BOND; PROVIDING FOR THE SECURITY OF SAID BOND; AWARDED THE SALE OF SAID BOND TO THE SUCCESSFUL PROPOSER FOR SAID BOND; APPOINTING A PAYING AGENT AND REGISTRAR FOR SAID BOND; AUTHORIZING PROPER OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID BOND; AND PROVIDING AN EFFECTIVE DATE.

**Staff Contact:** Kelly McGuire, Finance Director (386-676-3226)

- C. **RESOLUTION NO. 2015-155** : A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR SERVICES BETWEEN THE CITY AND HALIFAX HUMANE SOCIETY, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Andy Osterkamp, Police Chief (386-677-0731)

- D. **RESOLUTION NO. 2015-156** : A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY AND THE PACE CENTER FOR GIRLS, INC.; SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Robert Carolin, Leisure Services Director (386-676-3279)

- E. **RESOLUTION NO. 2015-157** : A RESOLUTION AUTHORIZING EXECUTION OF A SERVICE AGREEMENT BETWEEN THE CITY AND THE ORMOND MEMORIAL ART MUSEUM, INC.; AUTHORIZING THE EXPENDITURE OF FUNDING; AND SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Robert Carolin, Leisure Services Director (386-676-3279)

- F. **RESOLUTION NO. 2015-159** : A RESOLUTION AUTHORIZING THE EXECUTION OF A QUITCLAIM DEED IN FAVOR OF OBKEL, LLC., A FLORIDA LIMITED LIABILITY COMPANY CONVEYING ANY PHOSPHATE, METALS, MINERAL AND PETROLEUM RIGHTS THE CITY MAY HAVE IN A PART OF LOT 29, ALL OF LOTS 70, 71, 72, AND 73, AND AN UN-NUMBERED LOT SITUATED SOUTH OF SUNSHINE BOULEVARD, EAST OF LOT 70 AND WEST OF LOT 71 (4 SUNSHINE BOULEVARD) (PARCEL ID NOS. 4218-00-03-0011 AND 4218-01-00-0730) AT THE AIRPORT BUSINESS PARK, PHASE I; AND SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Joe Mannarino, Economic Development Director (386-676-3266)

- G. **RESOLUTION NO. 2015-160** : A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE SALE AND PURCHASE OF LOT 2, AIRPORT BUSINESS PARK, TOWER CIRCLE EXTENSION, PHASE II; SETTING FORTH AN EFFECTIVE DATE

**Staff Contact:** Joe Mannarino, Economic Development Director (386-676-3266)

- H. **RESOLUTION NO. 2015-161** : A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING BETWEEN THE CITY AND THE HOUSTON- GALVESTON AREA COUNCIL; AND SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Kevin Gray, Public Works Operations Manager (386-676-3522)

- I. **RESOLUTION NO. 2015-162** : A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A PURCHASE AUTHORIZATION (REQUISITION 0000013109) FOR THE PURCHASE OF ONE HARBEN TRAILER MOUNTED SEWER CLEANER UNDER HGACBUY BID NUMBER SC01-15; DECLARING EXISTING SEWER CLEANER TO BE SURPLUS PROPERTY, AND AUTHORIZING THE DISPOSITION THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Staff Contact:** Kevin Gray, Public Works Operations Manager  
(386-676-3522)

- J. **Implementation of the Memorial Tree Program**

**Staff Contact:** Robert Carolin, Leisure Services Director (386-676-3279)

**Disposition:** Approve as recommended in the City Manager memorandum dated August 5, 2015.

## 9. DISCUSSION ITEMS

- A. **Request by American legion to utilize City owned building to conduct instant bingo games**

**Staff Contact:** Randal Hayes, City Attorney (386-676-3217)

## 10. REPORTS, SUGGESTIONS, REQUESTS

## 14. ADJOURNMENT

### Item #1 – Meeting Call to Order

Mayor Kelley called the meeting to order at 7:00 p.m.

### Item #2 – Invocation

Pastor Chris Chandler, Christ Presbyterian Church, gave the invocation.

### Item #3 – Pledge of Allegiance

Mayor Kelley led the Pledge of Allegiance.

### Item #4A – Presentation to Ormond Strong

Mayor Kelley stated that this was one of the most inspiring portions of a meeting he would ever have the privilege to be a part of. He invited Ms. Debbie Kruck and her Ormond Strong crew to the front of the chambers along with the City Commission.

A video was played that detailed some of the efforts of the Ormond Strong group and played the song “Proud to be an American.”

Mayor Kelley presented Ms. Kruck and the Ormond Strong members with a check for \$1,000 from the City Commission. He commended Ms. Kruck for her efforts and her service to those serving our country.

Ms. Debbie Kruck, Ormond Strong, stated that at the end of the Sermon on the Mount Jesus closed by saying “*whoever hears these words of mine and does them shall liken to a wise man whose built his house upon a rock and the rain descended and the floods came and winds blew and beat upon that house and it fell not because it was founded upon a rock.*” She stated that Ormond Strong consisted of spouses, parents, family friends and veterans of the United States Armed Forces. She stated that Ormond Strong met every morning at 7:15 a.m. and walked the Granada Bridge every morning at 7:30 a.m. to raise awareness and support for the over 200 local soldiers currently deployed in Afghanistan. She explained that Ormond Strong did that in honor of their veterans, including the Vietnam veterans, who knew what it felt like to be forgotten. She stated that they would not stop walking for over 380 days or until the last soldier from the local unit returned home. She explained that they chose Ormond Beach to carry out their mission.

Ms. Kruck stated that Ormond Beach had a long history of supporting the military and explained that they had seen the plaques and sculptures honoring veterans, saw the

military display in the City Hall atrium and walked by the gardens dedicated to those who had made the ultimate sacrifice every day. She stated that when they walked over the bridge and their flag flew they knew that the wind did not move it but instead it flew with the last breath of every soldier who died defending it. She explained that they saw the smiles of those who walked past them and knew they knew that freedom was everyone's job. She stated that Ormond Strong would complete their mission as their mission was founded on a rock and that rock was Ormond Beach.

#### Item #5 – Audience Remarks

Mayor Kelley noted that no audience members wished to speak on any items *not* on the agenda during audience remarks.

#### Item #6A– Approval of Minutes

Mayor Kelley advised that the minutes of the July 28, 2015 meeting would be available at the August 18, 2015 meeting, due to the short time between the July 28, 2015 meeting and the August 5, 2015 meeting.

#### Item #7 – Community Redevelopment Agency

Mayor Kelley stated that the following item was a Community Redevelopment Agency (CRA) item. He explained that the City Commission served as the Community Redevelopment Agency of the City and must review the item and make a recommendation as the CRA. He recessed the City Commission meeting at 7:12 p.m. and called the CRA meeting to order.

#### #7A – Florida Fish and Wildlife Conservation Commission Boating Infrastructure Grant

City Clerk Scott McKee read by title only:

##### RESOLUTION NO. 2015-153

A RESOLUTION OF THE CITY COMMISSION, ALSO ACTING AS THE COMMUNITY REDEVELOPMENT AGENCY, OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION UNDER THE BOATING INFRASTRUCTURE GRANT PROGRAM FOR FUNDING ASSISTANCE RELATIVE TO CONSTRUCTION OF A PUBLIC DOCK AT CASSEN PARK; AUTHORIZING THE EXECUTION OF ALL DOCUMENTS INCIDENTAL THERETO, INCLUDING ANY CONTRACT NECESSARY FOR THE CITY TO ACCEPT THE GRANT AWARD; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Jerry Janaro, 1307 Northside Drive, stated that he served on the Board of Ormond Beach Main Street. He explained that he was a longtime boater and had been up and down the east coast of the United States on his vessels. He stated that he always wondered why Ormond Beach did not have a place where a cruising boater could pull their boat in and enjoy the beautiful downtown. He explained that he had visited many places on the east coast that were not as nice as Ormond Beach but received visitors from the intracoastal waterway. He asked the Commission to consider allowing overnight dockage at the facility for a minimum period of 24 hours. He explained that overnight dockage would allow cruising vessels to be able to come into the community and at a very low impact walk downtown and eat in restaurants and visit city sites. He stated that without overnight stays the dockage proposed would not be used as much in his estimation. He explained that he thought it would be primarily used by day boaters that lived locally, which could prevent some of them from staying for dinner and reduce the economic impact of the project.

Mr. Janaro stated that whether or not there was overnight dockage, docks were still needed in Ormond Beach. He stated that he hoped that the Commission would consider allowing short-term overnight dockage. He noted that there was no electricity on the docks and the boaters would not be able to live there. He stated that cruising boaters had their own generators on board. He stated that they would come, dine and leave the next day. He noted that day boaters would also be doing the same.

**Commissioner Boehm moved, seconded by Commissioner Stowers, for approval of Resolution No. 2015-153, as read by title only.**

Commissioner Kent asked Ms. Shanahan if there was anything about overnight docking in the grant request materials; whereby, Ms. Shanahan stated that would be a policy decision.

Commissioner Kent explained that he had met with Mr. Janaro and had brought this topic up at a City Commission workshop because of his meeting with Mr. Janaro. He noted that he was not taking a stance against the overnight dockage, but he was glad that they were not voting on that this evening as this was new to him and he needed time to digest it. He stated that he needed to talk to Mr. Janaro about it and explained that he did not like being surprised and he felt very surprised. He explained that overnight dockage was not presented to him when he and Mr. Janaro walked the dock and talked about it. He stated that he needed to do a little more homework about that.

Ms. Shanahan clarified that this item would merely submit a grant application.

Commissioner Kent explained that he did not like surprises and he wanted to ensure he did not miss something.

Commissioner Boehm stated that Mr. Janaro had worked up a proposal on the docks this year, but it was very unusual for things to move very quickly. He praised City Engineer John Noble who had recently been presented with this project that was not on his radar and came up with multiple grant ideas, funding proposals, and designs on such short notice. He stated that this was another example of the Commission embracing an idea and city staff taking that idea and running with it to create a viable proposal.

Mayor Kelley clarified that this was just a request to submit a grant application and that any changes to the uses would be decided later.

Commissioner Partington noted that in the City Manager Memorandum accompanying the item there was a section in the background which read “no overnight dockage would be allowed” but he saw no reference to that in the grant application.

Mayor Kelley stated that he did not think that it would affect the grant; whereby, Mr. John Noble, City Engineer, confirmed that.

The motion passed by voice vote.

Mayor Kelley closed the public hearing, adjourned the CRA meeting and reconvened the City Commission meeting at 7:20 p.m.

Item #8– Consent Agenda

Mayor Kelley advised that the actions proposed for the items on the Consent Agenda were so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any items separately.

**Commissioner Kent moved, seconded by Commissioner Stowers, for approval of the Consent Agenda.**

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #9A – Request by American Legion to utilize City owned building to conduct instant bingo games

Mr. Randy Hayes, City Attorney, stated that Reverend Willie Branch, on behalf of the American Legion (the “legion”), had requested that the legion be allowed to utilize what was commonly known as instant bingo games at the property that they leased from the city. He noted that he would let Reverend Branch explain the request. He explained that Deputy City Attorney Ann-Margret Emery was the resident expert on the matter and was also in attendance to supplement the discussion as needed.

Mr. David Ineder, 6814 Vintage Lane, Port Orange, noted that he was not a resident of Ormond Beach but was a member of American Legion Post 267. He explained that he traveled the country on a motorcycle and visited American Legion posts all over the country, and this was the only post he had ever been in that did not have a pull-tab machine or slot machines to raise money for veterans in the community. He stated that his only question was why.

Reverend Willie Branch, 6 Cherokee Trail, stated that the Ormond Beach American Legion Post had been serving the city for over 65 years. He explained that the legion had served the community in various ways and provided the Commission with a brochure outlining those. He stated that without those entertainment machines, the legion would not have the funds to continue supporting the community. He stated that veterans had been looked upon and ignored for too long. He explained that the American Legion was the oldest veterans' service organization in the world. He stated that the legion just wanted to serve its veterans and the community. He asked that the Commission not lean so heavily on a legal opinion but instead grant the legion post an exemption to allow them to function as they had over the last 40 years that they had leased from the city. He asked that they not be treated too poorly as they had been treated poorly enough.

Mayor Kelley stated that the City of Ormond Beach did not make the law, just enforced it. He noted that the city respected every veteran present or otherwise. He stated that he did not think there was a Commission more appreciative of veterans or more active in recognizing veterans. He stated that if it violated state law the city did not have control over that. He passed around a pull-tab example.

Mr. Hayes stated that if the Commission was inclined to approve the request it would be brought back in the form of a resolution. He stated that the statute was pretty strict on the details.

Mayor Kelley stated that the materials provided in the agenda packet were very detailed and he asked if there was anything that needed to be highlighted.

Mr. Hayes explained that it came down to whether or not the Commission wanted to authorize it. He stated that if the Commission was inclined to do so, staff's recommendation was that it only be the paper pull-tab vending machine bingo card that would be authorized and not any of the electronic components. He noted that the electronic aspect fell on the side of what was not permitted by state statute. He explained that there was a bit of a gray area with respect to vending machine style pull-tab instant bingos and so that was an area where the City Commission could weigh in from a policy perspective. He reiterated that if the Commission wanted to authorize that use, a resolution would be brought back.

Mayor Kelley stated that he had some question about the Attorney General opinion referenced. He stated that the opinion was based upon one that was somewhat open to interpretation. He asked what liabilities the city would have if the Commission approved something that was unclear as to its legality, such as granting something that the state had said may or may not be illegal.

Ms. Ann-Margret Emery, Deputy City Attorney, noted that there were two types of machines being discussed. She stated that the electronic machines were electronic gaming machines and therefore illegal. She explained that charitable organizations were authorized by the legislature to conduct instant bingo as long as they were conducting regular bingo games on the premises. She further explained that where the statute was unclear was whether the legislature intended for the cards to be sold by hand or to be sold through a self-service vending machine. She stated that an early Attorney General opinion suggested that those machines would be gaming machines. She explained that her opinion was that the statute was unclear one way or another. She stated that she sought out other opinions in fairness to the legion and received another opinion from an Assistant State Prosecutor who disagreed with that opinion. She stated that if the legislature was to come back and clarify that one way or another, she did not think there would be any liability for the city but the city would have to follow the determination of that clarification.

Mayor Kelley asked Ms. Emery if there were any other non-profit organizations using the pull-tab instant bingo; whereby, Ms. Emery stated that she suspected that they were fairly commonly used. She noted that she did not specifically ask different organizations.

Mayor Kelley noted that Ms. Emery got the pull-tab he was holding from somewhere; whereby, Ms. Emery stated that she obtained it from the legion. She explained that those cards did not have the same risk as the gaming machines, as they were highly regulated and had to meet a number of requirements. She noted that there was not as much danger that this could be a slippery slope.

Mayor Kelley asked Ms. Emery if she knew of anyone using the pull-tab cards that had been called upon by the State Attorney or another entity for prosecution; whereby, Ms. Emery stated that other than the Attorney General opinion referenced from years ago, she did not know of any prosecution and noted that the Assistant State Prosecutor she spoke to indicated that they would not prosecute.

Commissioner Boehm stated that he read the entire statute to educate himself about bingo. He explained that he believed that the statute contemplated the use of paper pull-tabs of that nature and limited them to not being sold for more than one dollar and prohibited discounts for selling them in bulk. He further explained that to him whether it was dispensed by a human or by a machine made little material difference when speaking about a one dollar item. He explained that since it had to be paper and had to meet the state statute regarding its dispensing, he did not see any reason not to allow the legion to have a machine that dispensed them. He noted that he would be willing to defend it if he had to. He stated that his reading of the statute detailed all of the restrictions and regulations on the tabs. He stated that the legion needed the help and did good things for the community. He noted that he was in favor of allowing the usage of the machines.

Commissioner Partington asked Mr. Emery if the legion could just have instant bingo games, and not need Commission approval, if the legion had their own property and were not utilizing a building subsidized and owned by the city; whereby, Ms. Emery stated that she believed so.

Ms. Emery explained that even if the use was found to be perfectly legal, it would still be up to the Commission to decide whether or not they were going to allow it. She stated that she did not think that the selling of pull-tab bingo cards in a vending machine would be prosecuted if all of the requirements under *Florida Statutes* were met. She noted that there were numerous requirements including that a charitable organization had to sell the pull-tabs, that the organization had to conduct actual bingo games as well, and that there had to be a three-person committee with one person present at all times during the sales.

Commissioner Partington asked if there could be charitable organizations all over the city where this was already taking place as long as they were meeting the regulations; whereby, Ms. Emery confirmed that was correct.

Commissioner Partington stated that the question was whether the Commission wanted to allow it on city property. He stated that he believed that the city leased the building to the legion for \$1.00 annually. He asked how many other charitable or non-profit organizations the city had similar lease agreements with; whereby, Ms. Shanahan stated that she did not know offhand.

Ms. Emery stated that a lot of the lodges had asked to use electronic gaming machines and the city had continually disallowed that, regardless of whether they leased from the city or not, because it was illegal.

Commissioner Partington explained that he was thinking about the other groups that the city leased to and whether the Commission would have to grant the same allowance to any other group if they did it for this group. He noted that this was a concern that he had. He stated that the legion was doing live call bingo and noted that was gambling just as much as selling the bingo cards was. He asked if the city should support gambling. He stated that if it was happening in a private place and allowed by state statute then the city did not have control over it, but in this situation the city had purview and would be allowing gambling.

Commissioner Stowers noted that his overall tolerance for risk on this sort of issue was rather low. He stated that he understood that neither the Assistant State Prosecutor's opinion nor the Attorney General's opinion was necessarily binding. He explained that the question was what the risk was and noted that the building was city property. He noted that the legion could purchase their own property and the issue would not involve the city. He stated that the City Commission supporting it by approving it on city property

was too risky for him. He explained that many years ago he had a client in Jacksonville who had a veterans group using gaming machines and the client had told him that it was completely legal to do so. He stated that he had been conflicted with working on the case, and four or five years later those places were all raided. He reiterated that at the time the machines were installed in those locations, it was said that it was completely legal. He explained that he was not suggesting that pull-tab bingo would result in a raid but was suggesting that as a Commissioner he had a low tolerance for putting the city at risk for that sort of scenario. He stated that it was not worth it to him.

Commissioner Kent noted that he was still contemplating his decision. He stated that he felt that Reverend Branch was a top notch individual. He noted that Reverend Branch had mentioned that his group, or veterans, had not been treated well, whereby he felt Ormond Beach had been exceptional to its veterans. He noted that everyone had stories and one of his grandfathers had served in the South Pacific and the other was a Pearl Harbor survivor. He stated that it meant a great deal to him, the Commission and the entire city to support and respect veterans. He referenced the earlier presentation to Ormond Strong and noted that the timing was coincidental as Commissioner Boehm had brought up providing support to Ormond Strong at the previous meeting and Ormond Strong had a deadline they were trying to accommodate.

Commissioner Kent noted that he appreciated the cheers from the audience, referencing when audience members cheered Commissioner Boehm's earlier supportive comments. He stated that he thought that Commissioner Stowers had a good point. He noted that the city helped out the legion by providing them a building at a \$1.00 per year lease. He explained that he was not saying "no" yet and wanted to hear Mayor Kelley's thoughts on the matter. He noted that he was still on the fence.

Mayor Kelley stated that Ms. Emery answered one of his concerns, which was the issue of liability. He addressed Reverend Branch, who was speaking from the audience, and asked him to conduct his conversation in the back of the chambers. He explained that it was the Commission's time to hold their discussion on the matter. He noted that Ms. Emery had stated that the city would not be liable. He explained that solved the concern he had about possibly putting Ormond Beach residents in jeopardy. He stated that a scratch-off ticket could be purchased at any convenience store. He stated that being against gambling itself was one issue but this issue was whether the Commission would allow this use on city property. He stated that he would support the use since the city would not be liable. He noted that there was gambling all over the state and country, but he respected the rights of individuals to be against gambling. He reiterated that purchasing lottery tickets was gambling.

Mayor Kelley noted that he and Reverend Branch were friends and some of the comments made rankled him. He stated that his father was shot and captured four weeks after D-Day in France. He stated that his father suffered and spent 14 months as a prisoner of war in a German prison camp. He noted that the comment had been made that veterans were not cared about. He stated that this Commission met with veterans and provided space for them in the City Hall atrium so that they could have their veterans' display. He noted the memorials at the museum and how the Commission worked to move the entrance so that the veterans could enter. He stated that those comments hurt. He explained that he would not hold it against Reverend Branch but wanted to tell him how he felt. He noted that he was not usually this way, noting that he had gotten emotional and tried to be warm and fuzzy most of the time. He stated that he would be warm and fuzzy in supporting the use but stated that no one should ever tell him or any member of the Commission that they did not support veterans in Ormond Beach.

Mayor Kelley explained that he was working with the City of Deltona to try and do more with their museum. He stated that he had gone out to welcome veterans home and went on World War II veterans trips to Washington, D.C. He stated that it hurt to hear that veterans were not supported. He explained that he hoped that in their hearts the veterans knew that Ormond Beach supported them and that they supported Ormond Beach's efforts to do so.

Commissioner Boehm addressed Commissioner Stowers' comments and noted that the statute specifically allowed charitable organizations involved with municipal property to conduct instant bingo games. He explained that the city would not be end-running a statute if they allowed it. He noted that it had been contemplated by the legislature when the statute was written. He stated that concerns about liability did not outweigh his feeling that it should be allowed.

Commissioner Stowers stated that as Commissioner Kent said, it was hard to speak frankly and voice concerns when you hear cheers being given. He explained that he gave his position and was doing his job. He stated that he agreed with Mayor Kelley's comments as far as support for veterans, noting that one of his brothers was a United States Air Force veteran and the other was currently in the United States Air Force. He explained that he was concerned about the cheers and jeers on a subject like this and noted that he was looking at the letter of the law. He noted that he understood Commissioner Boehm's point. He stated that the specific matter of a machine dispersing the pull-tab bingo cards was a gray area according to the Attorney General's opinion. He noted that they could call 100 attorneys and would probably get 100 different opinions. He explained that a Florida Attorney General Office opinion had a little more weight behind it in his opinion. He read from the opinion as follows "*therefore, according to the opinion in order to be legal the pull-tab instant bingo cards must be sold by hand just as bingo cards are sold at traditional bingo games.*" He stated that he would be in favor of doing just that and have no qualms about it. He asked if it was a nuance that was meaningless. He explained that there were state regulations that the Commission could not correct. He stated that they could go back and forth about the nuances of the law but his position was simply that of risk tolerance.

Mayor Kelley stated that he felt comfortable as far as the liability went. He noted that three members of the Commission were attorneys and that he and Commissioner Kent played attorney from time to time. He stated that he could read the law as well as anyone and have an opinion on it. He explained that if the law was always one way there would not be plaintiffs and defendants, noting that there would always be different opinions. He stated that Commissioner Boehm pointed out that the state offered and allowed the cities to have gambling on their premises by state law. He asked when the Attorney General opinion was given.

Ms. Emery stated that she believed it was in 1995.

Mayor Kelley stated that he did not know if those machines were around 20 years ago. He noted that some of the veterans in the audience were indicating that they were sold in machines or manually back then. He stated that a 20-year old opinion might be corrected if reviewed now by the state.

Ms. Emery apologized and clarified that the opinion had been given in 2008, not 1995. She noted that for some reason she had the year 1995 on her mind.

Mayor Kelley reiterated that he was not uncomfortable regarding any potential liability that the city would have. He noted that Commissioner Boehm, who was an attorney, was also in agreement with Ms. Emery, and that Commissioner Stowers, who was also an attorney, was not comfortable with the liability.

Commissioner Partington stated that if the legislature changed the law, such as in Commissioner Stowers' example, then the legion would be raided and need to get rid of the machine. He explained that he did not look at the issue as whether or not the city was supporting veterans but was looking at it in relation to charitable organizations and including the legion in that. He noted that if the Commission approved it for the legion, then if the art museum came and wanted to start doing bingo and selling cards he would be willing to do it for them, as well. He stated that it would be done for any group that contracted with the city.

Mr. Hayes noted that there were other non-profit organizations that leased city property. He explained that to be entitled to ask permission to have pull-tab bingo they would also have to conduct live bingo games. He stated that it could happen but bingo games were not currently occurring. He explained that the big question for the Commission was the policy question. He noted that bingo was gambling according to the statute but an exception was created for non-profit organizations. He stated that if it was on city-owned property, then the elected body had to make a policy decision as to whether or not it was appropriate. He noted that there were merits on both sides. He explained that staff was looking for direction from the Commission but noted that they did not need to have a vote taken that evening.

Mayor Kelley stated that he would be against it if the city had to take 10% of the profits.

Commissioner Stowers stated that on items like this he sometimes felt like he was spending more time saying what he was not saying than actually making the point. He clarified that he had not indicated that the city was on the hook for any liability. He

explained that his comment had been regarding the risk and the potential for the city to be involved in a future issue because of it.

Mayor Kelley noted that he misunderstood as he believed that Commissioner Stowers had been concerned with liability. He noted that machines were taken out of various privately owned buildings after the state ruled on the machines a few years earlier, but no one had to pay for the confiscation. He stated that the only liability was the Lieutenant Governor losing her office because of representing a company involved. He asked Commissioner Stowers if there was an issue there that he did not see.

Commissioner Stowers stated that Mayor Kelley made a valid point. He noted that this was a discussion item for the Commission so he was discussing it.

Mayor Kelley noted that the Commission could not discuss any matters outside of a public meeting due to the Sunshine Laws.

Commissioner Stowers stated that he had listed his concerns, stating that Mayor Kelley made a valid point in regards to the property owners involved in the raids not incurring any liability. He stated that was new information that he did not have available this evening, as he was discussing information based on the packet provided and the Attorney General opinion provided.

Mayor Kelley stated that this organization had been using some of the gambling machines that were deemed illegal when the ruling came down and were no longer presently using them. He stated that the city did not suffer any consequences from that, noting that the city did not know they were doing it. He stated that the city did not get written up in the newspaper or get criticized. He stated that gambling could occur so long as it was allowed in the lease and noted that it was not.

Mr. Hayes stated that he had a thought that he wanted to share. He explained that he was not advocating a position one way or the other and did not want to interject into the Commission's discussion. He stated that if the Commission was inclined to approve the request, there could be a condition included in the resolution that provided that in the future if the gray area was clarified adversely to the point that it was determined that the vending style pull-tabs were illegal, then the vending devices would have to be removed from the facility. He explained that in the event of such a ruling the legion would have to comply with the law anyway. He further explained that if part of the concern was that the Commission might be authorizing a use that could potentially be determined to be illegal in the future, a specific condition could be stated in the resolution to succinctly state the terms of the approval.

Commissioner Kent stated that he was more comfortable with that and would be fine with approving it, noting that the Commission was not voting on it that evening.

Mayor Kelley instructed Mr. Hayes to bring back a resolution with that language at a future meeting. He noted that the item would be brought back to the Commission and asked the veterans to review the language in advance of that meeting so that if they had any objections they could address their concerns to him or any of the Commissioners. He stated that he would guess the resolution would be back within a month.

#### Item #12 – Reports, Suggestions, Requests

##### Upcoming Meetings

Ms. Shanahan stated that in September the City Commission meetings would also be the budget hearings and would be held on Wednesday, September 9, 2015, and Wednesday, September 23, 2015. She explained that those regular meetings were moved from Tuesday to Wednesday as state law did not allow for the meetings to take place on the same day as the School Board or County Council budget meetings.

##### Movies on the Halifax

Ms. Shanahan stated that the Movie on the Halifax for Friday, August 7, 2015, would be *Paddington*. She noted that she understood it to be similar to *Lassie*, in that he got lost and came home.

##### National Night Out

Ms. Shanahan stated that she enjoyed National Night Out, specifically dancing with the Chic-Fila cow.

### Elections

Mayor Kelley asked the Commission if he could alter their speaking order for their comments tonight and if he could speak first and Commissioner Partington could speak second.

Mayor Kelley noted that this was not his last meeting but announced that he had decided to seek the office of County Councilman for District 4 in the 2016 election. He stated that he would continue to serve as Mayor until the day before the second to last meeting in November 2016. He noted that he still had a long time to serve and there was still a lot of work to be done. He explained that he wanted to let everyone know and put it on the record.

Commissioner Partington stated that it seemed lackluster to make his announcement there as he had already made it on the radio and in the newspaper. He announced that he would be a candidate for Mayor to try and fill Mayor Kelley's large shoes. He stated that he was not currently the Mayor and noted that people kept coming up to him and congratulating him. He noted that an election still had to occur next year. He explained that he had been born and raised in Ormond Beach and it was exciting for him to have served for over 12 years on the Commission. He stated that he felt well qualified and well supported, noting that he had received many calls and emails. He stated that he looked forward to the challenge.

Mayor Kelley stated that he had large shoes to fill from Mayor Costello. He stated that the current Commission was great to work with. He explained that his basic reason for running was not to leave Ormond Beach, noting that Ormond Beach was included in District 4. He further explained that he wanted to give a city's perspective at the table and give a voice to Daytona Beach, Ormond Beach, Holly Hill and some unincorporated county areas so that the cities did not have to wait four years to get something done. He stated that if you were not at the table, you were on the menu, and he wanted to get them off of the menu.

### Agenda Packet

Commissioner Stowers stated that since the last meeting was just a week prior they had a shorter agenda packet than usual. He noted that he had referenced one of the last items and it was on page 228, noting that it was usually 1,228.

### Commissioner Boehm

Commissioner Stowers thanked Commissioner Boehm for always being in tune with what was going on in the community. He stated that Commissioner Boehm had a particular proclivity to know exactly what was going on and made good decisions and suggestions. He noted that he thanked him at the time but the moment of silence that Commissioner Boehm asked for two days before his daughter's surgery was something that he would never forget. He stated that he thought about that this evening due to Commissioner Boehm's efforts to have the Commission assist Ormond Strong.

### National Night Out

Commissioner Stowers explained that he was reflecting on going to the National Night Out event at the Nova Recreation Center in 2011 with his wife and now four years later going with his wife and his two daughters for the first time. He stated that probably the only thing that has not changed was Ms. Shanahan dancing with the Chic-Fila cow and him enjoying watching that. He stated that it was a great event as usual and it was that much sweeter to be there with his family. He noted that members of the Commission always told him that "it just gets better" in regards to parenting and they had not been proven wrong yet.

### Elections

Commissioner Kent stated that Commissioner Partington would make a fine Mayor and he hoped he was reelected to sit next to him and support him every step of the way. He stated that Mayor Kelley was exactly what was needed for the County Council. He explained that the council had a letter signed by the Commission and it took them almost one year to get one beach approach open. He stated that there was no doubt that if he called Mayor Kelley, he would pick up the phone and noted that Mayor Kelley would do so for all of his constituents. He stated that Mayor Kelley was a common sense man who tackled problems with a common sense approach.

### Sergeant Gogarty Retirement

Commissioner Kent stated that he was going to do something that was probably going to make Police Chief Andy Osterkamp unhappy. He explained that he wanted to give "mad

props” to an individual who was there this evening for the last time watching over the Commission in the Commission Chambers. He noted that most people did not even know he was there which was why Chief Osterkamp was probably upset with him for mentioning it. He stated that this gentleman came to a lot of the meetings and had served Ormond Beach for 31 years. He stated that this individual had been in the newspaper for chasing the bad guys on his motorcycle and laying his motorcycle down to protect other people in the wake of a crash and putting himself in harm’s way to protect innocent bystanders. He asked everyone to join him in celebrating the last meeting and upcoming retirement of one of Ormond Beach’s finest, Sergeant Jamie Gogarty.

The audience stood and applauded Sergeant Gogarty.

Commissioner Kent stated that Sergeant Gogarty was a man’s man and had served Ormond Beach well. He stated that the city would be a little bit less without him but he wished him the absolute best. He thanked him for all he had done and stated that he was proud to call him his friend.

Ms. Shanahan gave Sergeant Gogarty a “Go Steelers.”

#### Elections

Commissioner Boehm echoed Commissioner Kent’s comments. He asked those in attendance to look at their tax bills and see what they paid each entity. He invited them to look at the services they received from the city for what they paid them and then asked them to look at what they paid Volusia County, which was double what was paid to the city, and ask what the county was doing for them for that money. He stated that it took four years for the city to get a joint participation agreement (JPA) with the county finalized and during those four years Cheaters and the Outlaw Motorcycle Club moved into that area. He noted that county staff allowed anything and everything to go up on North US1. He stated that it would take years for the city to unravel that. He explained that the city needed a County Councilman who would fight for the city.

Commissioner Boehm stated that the Commission shared a passion for the city and a passion to make the city the best it could be. He explained that the city was deprived of their ability to do that on North US1 and were held up by a county staff that did not think it was important. He stated that the city did not have a County Councilman fighting for them to make it important, and as a result it took years to get it done. He stated that he was confident that Mayor Kelley would get it done when he got to the County Council. He stated that Commissioner Partington absolutely shared a passion for the city and he had no question that the city would not miss a beat when Commissioner Partington moved from his seat to Mayor Kelley’s, and he hoped he would still be sitting right next to him.

#### American Legion Instant Bingo Games Request

Commissioner Boehm stated that he saw the passion that the veterans had for keeping the American Legion Post open. He stated that the number of people that Reverend Branch brought to the Commission Chambers this evening on relatively short notice was very impressive to him and he was always impressed by Ormond Beach’s residents and what they were willing to do to step up for the city. He stated that the Commission would get the bingo games approved for them as they deserved to have it.

#### American Legion Instant Bingo Games Request

Commissioner Partington stated that he appreciated the veterans in attendance. He noted that he had his concerns about gambling but stated that the Florida Legislature had already spoken about that so when it came back to the Commission he did not think it would be a problem. He noted that he spoke to Reverend Branch over the phone about this a few months prior. He explained that the bigger problem for any fraternal organization was that the membership was dying off. He stated that all of the articles he researched indicated that if those organizations did not find new ways to recreate themselves or sustain themselves in the future, they would be at risk of their organization dying. He stated that it was recognized as happening all over the country. He stated this may help for a little while but the organization should try and think of new ways to carry on their purpose. He stated that the fantastic things that the legion did to make the city a better place were impressive and the city could not afford to lose that. He thanked the legion for what they did and hoped that the city could be a part of making that better.

Florida League of Cities

Mayor Kelley stated that Commissioner Boehm was right and stated that the Commission had done so much. He hoped the members of the Commission would be reelected. He noted that it could not have been done without the City Manager and all of the city employees. He stated that Ms. Shanahan did such a good job that she set up a Friday meeting for him and her in Orlando for the Florida League of Cities to speak about how City Managers work and interact with the Mayor and the Commission. He jokingly thanked Ms. Shanahan for scheduling that on a Friday afternoon in Orlando and joked that driving back from Orlando on Friday afternoon was one of the greatest thrills. He noted that on Wednesday he would be attending the Florida League of Mayors and this year a lot of their efforts were carried by Commissioner Partington. He noted that he could not be everywhere. He stated that Ms. Shanahan did appear to be everywhere and joked that she must be cloned as she attended multiple meetings in multiple locations in one day. He noted that Commissioner Partington would be at the Florida League of Cities all week and that he would be there Wednesday and Friday.

American Legion Instant Bingo Games Request

Mayor Kelley thanked the veterans for being in attendance tonight. He apologized to Reverend Branch for quieting him earlier. He stated that he and Reverend Branch were friends, and he meant no disrespect to him whatsoever as he and Reverend Branch were straight and honest with one another. He joked that maybe the veterans would think he did a good job not letting Reverend Branch speak again.

Item #13 – Adjournment

The meeting was adjourned at 8:11 p.m.

APPROVED: August 18, 2015

BY:

\_\_\_\_\_  
Ed Kelley, Mayor

ATTEST:

\_\_\_\_\_  
J. Scott McKee, City Clerk