

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

July 3, 2012

7:00 PM

Commission Chambers

Present were: Mayor Ed Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager Ted MacLeod, City Attorney Randy Hayes, and City Clerk Joshua Fruecht.

A G E N D A

1. CALL TO ORDER

2. INVOCATION

A. Pastor Michael Carruthers, Ormond Beach Union Church

3. PLEDGE OF ALLEGIANCE

4. PRESENTATIONS AND PROCLAMATIONS

A. Proclamation for Parks and Recreation Month

5. AUDIENCE REMARKS - REGARDING ITEMS NOT ON THE AGENDA

6. APPROVAL OF MINUTES

A. Minutes from City Commission meeting – June 19, 2012

7. 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. 2012-94** : A RESOLUTION AUTHORIZING THE EXECUTION OF AN AUDIT CONTRACT BETWEEN THE CITY OF ORMOND BEACH AND JAMES MOORE & CO., P.L. FOR INDEPENDENT AUDITING SERVICES; REJECTING ALL OTHER PROPOSALS; AND SETTING FORTH AN EFFECTIVE DATE.

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

B. **RESOLUTION NO. 2012-95** : A RESOLUTION ACCEPTING A BID FROM MAUDLIN INTERNATIONAL TRUCKS, INC.; AUTHORIZING THE EXECUTION OF A PURCHASE AUTHORIZATION (REQUISITION #0000009197) FOR THE PURCHASE OF A 2000 GALLON VACUUM SEPTIC TRUCK, UNDER BID NO. 2012-19; REJECTING ALL OTHER BIDS; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: Theodore MacLeod, Assistant City Manager (386-676-3200)

C. **RESOLUTION NO. 2012-96** : A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT AWARD FROM THE STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL REGARDING FUNDING FOR THE CITY'S VICTIM ADVOCATE PROGRAM; 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: Ric Goss, Planning Director (386-676-3238)

- D. **RESOLUTION NO. 2012-97** : A RESOLUTION URGING TOBACCO RETAILERS TO STOP THE SALE AND MARKETING OF FLAVORED TOBACCO PRODUCTS WITHIN THE CITY OF ORMOND BEACH; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: *Joyce Shanahan, City Manager (386-676-3200)*

- E. **RESOLUTION NO. 2012-98** : A RESOLUTION AUTHORIZING THE SUBMITTAL OF AN ONLINE GRANT APPLICATION TO THE U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF DOMESTIC PREPAREDNESS UNDER THE ASSISTANCE TO THE FIREFIGHTERS GRANT PROGRAM, FOR FUNDING ASSISTANCE TO PURCHASE FIRE EQUIPMENT; 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: *Loretta Moisiso, Grants Coordinator/PIO (386-676-3315)*

- F. **Bid Specifications for Property, Casualty, Workers' Compensation and General Liability Insurance Request for Proposal**

Staff Contact: *Shelly Arzola, Human Resources Director (386-676-3202)*

- G. **Bid Specifications for Employee Benefit Program Request for Insurance Proposals**

Staff Contact: *Shelly Arzola, Human Resources Director (386-676-3202)*

- H. **Bid Specifications for North Halifax Drive Rehabilitation Project**

Staff Contact: *John Noble, City Engineer (386-676-3269)*

- I. **Bid Specifications for Co-Op Annual Supply of Chemicals for Water and Wastewater**

Staff Contact: *Dave Ponitz, Utilities Manager (386-676-3305)*

8. **SECOND READING OF ORDINANCES**

- A. **ORDINANCE NO. 2012-24** : AN ORDINANCE AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF ARTICLE III, GENERAL REGULATIONS, SECTION 2-50, ACCESSORY USES, BY AMENDING THE REQUIREMENTS FOR HOME OCCUPATIONS; AND BY AMENDING THE REQUIREMENTS FOR SHEDS, UTILITY STRUCTURES, PLAYHOUSES AND GAZEBOS; BY REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: *Ric Goss, Planning Director (386-676-3238)*

9. **FIRST READING OF ORDINANCES**

- A. **ORDINANCE NO. 2012-26** : AN ORDINANCE RELATIVE TO STORMWATER MANAGEMENT; AMENDING SECTION 22-158, UTILITY FEE ESTABLISHED, OF ARTICLE V, STORMWATER DRAINAGE UTILITY, OF CHAPTER 22, WATERS AND SEWERS, OF THE CODE OF ORDINANCES, BY REMOVING THE SUNSET PROVISION OF THE STORMWATER UTILITY FEE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

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

10. STAFF ACTION ITEMS

A. UNMANNED AERIAL SYSTEMS TESTING AT THE ORMOND BEACH MUNICIPAL AIRPORT

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

11. REPORTS, SUGGESTIONS, REQUESTS

12. ADJOURNMENT

Item #1 – Meeting Call to Order

Mayor Kelley called the meeting to order at 7:01 p.m.

Item #2 – Invocation

Mayor Kelley gave the invocation.

Item #3 – Pledge of Allegiance

Mayor Kelley led the Pledge of Allegiance.

Item #4A – Proclamation for Parks and Recreation Month

Mr. Robert Carolin, Leisure Services Director, stated that the National Recreation Association had declared July as Parks and Recreation Month.

Mayor Kelley stated that local parks and recreation experiences enhanced the citizens of Ormond Beach's quality of life. He stated that the city recognized the benefits derived from quality parks and natural land resources at the local and regional level. He proclaimed July 2012 as Parks and Recreation Month and thanked Mr. Carolin for all that his department's ongoing efforts. He stated that he should have had Deputy Mayor Partington read the proclamation because he had just experienced one of the country's national parks at Yellowstone.

Mr. Carolin stated that the Leisure Service Department had put together a calendar for July with ideas for each day of the month to encourage citizens to enjoy Ormond Beach's parks.

Mayor Kelley stated that Ormond Beach was blessed with great parks. He stated that the city had a lot of help and participation from local residents in the community to help make the parks as good as they were.

Item #5 – Audience Remarks

Mr. Charles Ferguson, 44 Kent Drive, stated that he would like to thank Mayor Kelley and the Commissioners, and especially the city's excellent City Manager, Ms. Joyce Shanahan, for laying the groundwork for the trail to Tomoka State Park. He stated that there were six state parks in Volusia County. He stated that having the trail would make Ormond Beach a safer place for pedestrians and bicyclists, and a shining example for that kind of safety. He stated that he expected that most of those in attendance had read the series of articles in the Daytona Beach News-Journal ("News-Journal") about developing cities. He stated that one area that was profiled was Delray Beach, which was the jewel of South Florida. He stated that the city had engaged in a program of widening sidewalks, more pedestrian friendly upgrades, and encouraging interaction with small businesses. He stated that he commended the Commission's efforts on Granada Boulevard to develop a community and make the area less of an expressway to the beach.

Ms. Shannon McLiesh, 25 Live Oak Avenue, stated that she was running for County Council for District 4, which encompassed Ormond Beach. She stated that she had lived a block away from City Hall for over a decade with her husband and her children. She stated that her family loved the community and cared very much about it. She explained that was the reason that she was moved to run for office. She stated that she was concerned about the effects of the recession and the foreclosure crisis on the citizens of the local communities and the communities' ability to recover and be healthy.

She stated that she felt it was concerning to not hear much about those issues from the people she felt should be speaking about them. She stated that she highly recommended that anyone who had not read the series in the News-Journal that Mr. Ferguson had referenced, should do so. She stated that its content was exactly what should be discussed and what she had been talking about for some time. She stated that what the city was doing downtown was what should be done in all communities and residential areas. She stated that she felt that hard earned tax dollars were being used to fund large private projects and that was a problem. She stated that she had never run for office before but felt that people would find what she was saying to be very different from other candidates. She stated that her website was mcleish4countycouncil.com and that she was also on Facebook and had her phone number posted on her website.

Item #6A – Approval of the Minutes – June 19, 2012

Mayor Kelley advised that the minutes of the June 19, 2012, regular meeting had been sent to the Commission for review, and were on the city’s website for public viewing. He asked for any corrections, additions, or omissions. He stated that hearing no corrections, the minutes would stand approved as presented.

Item #7– 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 requested to pull item #7I.

Commissioner Partington moved, seconded by Commissioner Boehm, for approval of the Consent Agenda, absent item #7I.

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

Item #7I – Bid Specifications for Co-Op Annual Supply of Chemicals for Water and Wastewater

City Clerk Joshua Fruecht read by title only:

Bid Specifications for Co-Op Annual Supply of Chemicals for Water and Wastewater.

Commissioner Partington moved, seconded by Commissioner Stowers, for approval of item #7I.

Commissioner Kent stated that he had spoken a couple of months ago about the fact that he was not well versed enough in fluoride to have a definitive stance for or against it. He stated that he had spent the past two to three months researching the issue. He stated that he was still not convinced either way about the addition of fluoride to the water. He stated that he was on a fact-finding mission. He stated the reason he was speaking about it currently was that the item before them involved purchasing the fluoridation chemicals for a year at a cost of \$630,000. He stated that he had provided the Commission with a letter that he had sent to the city’s fluoride provider on May 19, 2012, requesting a 10-day response to his questions. He stated that when he did not receive a response he sent a letter to every provider in North America of those same products and asked them the same questions. He stated that he sent out 47 letters on June 21, 2012, and still had not received one response. He stated that he also included a proof of service by mail with the copies of the letters presented to the Commission.

Commissioner Kent stated that if you followed the news outside of the region, you would have noticed the almost volatile activities involving communities halting fluoridation, as well as new ones beginning to, almost always with heated participation. He stated that in following those public policy struggles, it was remarkable that the one party that seemed to have never participated in public discussions was the chemical manufacturer and/or supplier. He stated that he found that other communities had also decided to

focus on this issue and so he adopted a normal business request to chemical manufacturers to allow the facts declare themselves.

Commissioner Kent stated that he sent the first request to the city's current manufacturer, asking them to reply to some simple business questions, provide a declaration stating that their product would fulfill the city's intent to safely and effectively reduce tooth decay, and also to produce a true copy of the data concerning their product, which they were required to submit in order for them to be certified to sell their product in the state. He stated that he was completely disappointed that he did not receive a response and felt that it was not good enough. He stated that the current manufacturer and supplier not only did not answer the pertinent questions but ignored the request in its entirety. He stated that it was not a small issue since they were in the process of attempting to ensure everyone that the public policy of fluoridation was safe and that the impurities could hardly be detected once diluted. He stated that he requested a ten day turn-around because the information should have been readily available.

Commissioner Kent stated that around six weeks after the first request, he sent another identical request for the same information. He stated that this time he also sent it to every approved manufacturer of the fluoride chemicals that was listed on the NSF website. He explained that he did not send it to the suppliers in Mexico and China. He stated that this type of evasion of accountability and transparency was just not good enough. He stated that the ten days he requested for a response had expired but he would allow another week or so for delays and then inform the Commission of any replies. He thanked the Mayor for allowing him to speak on the issue. He asked Mr. Dave Ponitz, Utilities Manager, to come forward so that he could ask him a few questions. He stated that he had reviewed the list of chemicals the city intended to purchase and wondered how many products would need to be purchased to balance the pH level in the water because fluoride acid was added. He asked whether the corrosion inhibitor and the caustic soda were added to help relieve some of the acid so the pipes would not be damaged.

Mr. Ponitz stated that those chemicals he referenced aided in buffering the hard water characteristics that occurred in raw water. He stated that the corrosion inhibitor was an additive that helped the properties of the water not to corrode the metal pipes.

Commissioner Kent asked whether there were items on the list for purchase that would not have to be bought if fluoride was not purchased; whereby Mr. Ponitz stated that there were not any such items. Mr. Ponitz stated that they did not purchase other chemicals for treating the water or wastewater because of the addition of the fluoride.

Commissioner Kent stated that he was under the impression that because of the acid in the fluoride, the caustic soda needed to be added to help balance the pH level; whereby, Mr. Ponitz stated that the concentration of fluorosilicic acid added for the fluoride was very small but, like any other chemical, had a reaction that affected reactions in water. He stated that he was not capable of telling exactly what those reactions were at this time.

Commissioner Kent stated that he did not mean to put Mr. Ponitz on the spot. He stated that he had been hoping to get a response to his questions by now from the manufacturers. He stated that many people may think that the Commission knew what was on the agenda months in advance, when in fact they did not know until the Thursday before the meeting when they received it. He asked Mr. Ponitz whether the items needed to be purchased immediately and asked if it would cause problems if the purchase was delayed.

Mr. Ponitz stated that the purpose of the item was to share with the Commission the intent of the format of the bid documents that would be included with the City of Palm Coast collective bid. He stated that over the last three years, the city had been pleased that Palm Coast was willing to do a collective bid for several of the local cities. He stated that the city was trying to meet a deadline for getting the specifications in front of the Commission for transparency reasons.

Commissioner Kent asked if it would be brought before them again to actually purchase the items; whereby Mr. Ponitz stated that it would.

Commissioner Kent stated that he was glad he was able to inform the City Manager and City Commission about his efforts. He stated that he hoped before the item returned

that he would receive a response. He told Mr. Ponitz that if he happened to speak to the provider and they wanted to give him the answer to tell them that was not good enough. He stated that he had to vote on the item and wanted the answer himself, preferably in writing.

Mayor Kelley stated that, in case the audience was wondering, the Commission could not speak to one another outside of the meeting about any of the agenda items.

Ms. Joyce Shanahan, City Manager, stated that, as Mr. Ponitz had said, a year ago the city started adding a step to the city's bidding procedures, which was to bring them before the Commission and the public before the bid was even let out. She stated that the reason they did so was to receive their feedback and resolve any issues or questions with the bid.

Commissioner Kent stated that he was still not for or against fluoride in the water. He stated that he did not have enough information and if the providers would respond to his questions then he might.

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

Item #8A – LDC Amendments – Chapter 2 Article III, Accessory Uses – Home Occupations and Sheds, Utility Structure

City Clerk Joshua Fruecht read by title only:

ORDINANCE NO. 2012-24
AN ORDINANCE AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF ARTICLE III, GENERAL REGULATIONS, SECTION 2-50, ACCESSORY USES, BY AMENDING THE REQUIREMENTS FOR HOME OCCUPATIONS; AND BY AMENDING THE REQUIREMENTS FOR SHEDS, UTILITY STRUCTURES, PLAYHOUSES AND GAZEBOS, BY REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kent, for the approval of Ordinance No. 2012-24, on second reading, as read by title only.

Mayor Kelley stated that he wanted to point out that most of the audience was probably present for this particular issue, which primarily affected obtaining a business license to operate a business in a home. He stated that the occupation that received the most comments was the teaching of swimming lessons in a home. He stated that the Commission had not had the ability to discuss and review the issue collectively since the last meeting.

Commissioner Kent stated that he had heard a lot of different things from the print and news media and that there had been emails going around as well. He stated that he wanted to first say that he was a huge advocate of infant swim lessons. He stated that he had a five-year old son who took infant swim lessons at ten months old. He stated that it was one of the best things that his wife and he ever did for their family. He stated that he kept seeing coverage stating that the city wanted to ban private swim lessons in Ormond Beach. He asked Mr. Randy Hayes, City Attorney, if any resident who wanted to have a private swim lesson in Ormond Beach, today or tomorrow, would be able to do so in their backyard; whereby, Mr. Hayes stated that they could.

Commissioner Kent stated that it was possible to have a private swim lesson. He stated that he knew some were wondering how that could be because they had heard that the city was going to create a law that banned private swim lessons. He stated that there had been some misinformation spreading around and the whole story needed to be told. He stated that he understood that if he wanted to have a private swim lesson for himself or his son he could do so, if he called a swim instructor and had them come to his home and give the lesson. He stated that would be legal; whereby Mr. Hayes confirmed that it would be.

Commissioner Kent stated that his son's infant swim lessons were taught at the Holly Hill Community Pool. He stated that he wanted to let the Commission and audience know that the first two times he attended the lessons he had to walk away with tears running down his face because of the screaming of his son. He stated that if the lessons had been at a private residence he personally would have felt uncomfortable because of his son's screaming. He stated that his child screamed the entire time except when he was underwater. He stated that the child in front of his son screamed the entire time except when he was underwater as did the child after his son. He stated that he was sure all those children were great swimmers now and he had nothing against the wonderful program.

Commissioner Kent stated that now, unless he was wrong, the situation was one where the law had been broken. He stated that the law was not new. He stated that staff had recently decided to attempt to make home businesses easier and this occupation was one of the ones they had looked at. He stated that a complaint had then come in about these lessons. He stated that he himself would not want to live next to those lessons every day. He stated that someone had the audacity to send him an email containing a scare tactic. He stated that the email had said that if they did not allow private swim lessons in Ormond Beach, the next child that drowned would be on their conscience. He stated the emailer did not know him or his conscience well enough to make that statement. He stated that there would be a lot of passion that evening as people tended to get passionate about views they believed strongly in.

Commissioner Kent stated that some would tell them that the noise did not occur all day, and that it was just for a couple of hours. He stated that he would not want to live next to it even for an hour a day. He stated that they would also hear some say that the lessons were no louder than a birthday party, and he stated that even if that was so, you only had a birthday once a year, not five days a week. He stated that they would also be told it was the same as kids playing in the backyard but stated that if his child was too loud he could tell his child to tone down. He stated that you could not do that to a screaming infant. He stated that he did not mean to be abrupt or harsh, but if some audience members came that evening because they thought that you could not have a private swimming lesson in Ormond Beach, they had incorrect information. He stated that they might also hear that this ordinance would limit the amount of people able to have a private swim lesson. He stated that personal income limited how many people could receive swim lessons. He stated that if every lesson was free than the law would not be broken. He stated that he was not 100% decided on the issue but that he had spoken with the City Attorney about some ideas. He stated that he heard people say that the Commission must not care about children, which was not true because the Commission approved spending millions of dollars every year on recreation and safety for children.

Commissioner Stowers stated that the item came before them at first reading on June 19, 2012. He stated that it had already been to the Planning Board prior to that, where there had been vigorous debate. He stated that tonight was the second reading. He stated that the process was for the item to go to the Planning Board, then first reading, and finally second reading. He stated that most items breezed through that process but that the reason that process was in place was for controversial issues such as this. He stated that no decision had been finalized, but even as he sat there more emails were coming in regarding the issue and he was constantly updating his position based on all the facts available.

Commissioner Stowers stated that at the first reading he had spoken about private property rights and that he was always cognizant of added regulations. He stated that added regulations meant added enforcement, more government, and more taxes. He stated that he was always limiting what he wanted to see become additions or modifications to the city's Land Development Code (LDC). He stated that his position had been that he had no problem with someone using their property to have a home-based business. He stated that the question that emerged was related to when the activity was outside and a noise issue that affected the adjacent property owners, who also had a right to enjoy their property. He stated that was how the Commission got involved, not because they wanted more government, but because it was their job to balance all of those factors.

Commissioner Stowers stated that at the last meeting, he had looked at the noise ordinance, reviewed the materials, and the decibel level for residential properties; which was if exceeded by more than 10% for more than ten minutes was a noise violation. He stated that his interpretation at the time was that if that was the only threshold it would be nearly impossible to utilize it as a means or redress, as a child could cry for three

minutes then stop, then the next child could cry for a few minutes, and so on, which would not be a ten-minute violation.

Commissioner Stowers stated that following the meeting he spoke with family, residents, Ormond Lakes residents, supporters of the Infant Swim program, and continued to do so even that night. He stated that the more he heard about the issue, the response was always the same, that in essence it was a noise violation. He stated that he was a land use attorney and handled code enforcement work in other communities, for both plaintiffs and defendants. He stated that he read the code and spoke to the City Attorney about his interpretation. He stated that he wanted to read an email verbatim that he sent last Wednesday, because it contained a change of position and a change of facts. He stated that he sent the email to the Neighborhood Improvement Division (Code Enforcement), the City Manager, and the Chief of Police. He read the email as follows:

"I understand that the resident of 3 Ocelot Court has been conducting infant swim lessons. I am also aware of a neighbor that has been complaining for quite some time about the noise. The neighbor was told that the City was analyzing the LDC and could be changing same in order to permit swim lessons. I do not believe the city's consideration of home occupations, including swim lessons, has anything to do with the violation of the city's noise regulations. I previously stated that I felt that the enforcement of the noise ordinance was less efficient than a prohibition on swim lessons as a home occupation use. Upon further review of our city's noise ordinance, I was mistaken. I believe that the noise ordinance regulations, Section 14-30 2 through 5, Ormond Beach LDC, provide more than enough teeth for the city to address this neighbor dispute. I am disappointed that this has festered while the noise ordinance approach has been a possibility all along. I do not believe the answer to this frustration is to prohibit swimming lessons, a home occupation use that may or may not be prevalent in Ormond Beach. As far as I am concerned, if a noise violation is occurring the neighbor should seek to address it immediately as detailed in our regulations."

Commissioner Stowers stated that being a Commissioner was a tough job. He stated that people questioned the Commission's motives, their balancing of real issues, and sometimes had the perception that they would base their decision on emotions or who they spoke to last. He stated that he found that frustrating and it demonstrated to him that there was a lack of trust in the process. He stated that when he had an opportunity to try and correct that, he would do everything he could to set the record straight. He stated that was why he was taking his time to go through the issue methodically, as he felt that it was very important.

Commissioner Stowers stated that under Section 14-30.1 of the noise ordinance there was a decibel regulation of 60 decibels, and a violation would occur if the noise went 10% over that limit and had duration of ten minutes. He stated that in Section 14-30.2 there was language involving standard or intent with a standard complaint required, he read the referenced passage: *"with the exception of those exemptions provided by state law, noises prohibited by this section are unlawful. Notwithstanding the fact that no violation of Section 14-30.1 is involved, and notwithstanding the fact that the activity complained about it is exempted in 14-30.1e."*

Commissioner Stowers stated that he highlighted the phrase "notwithstanding the fact that no violation of Section 14-30.1 is involved". He stated that he had spoken with the City Attorney about that in great detail. He stated that he interpreted that to mean notwithstanding the fact that the decibel level was not reached or that there was some other per se violation, there would be another section that allowed someone to seek redress for a noise issue in the city. He stated that as evidence, he had looked at section 1 where it stated that "the sounding of any horn or signaling device on any automobile or other vehicle except as a danger warning." He stated that if you honked your horn and lived next door to a neighbor you did not get along with, but honked it less than ten minutes, there would be no per se violation. He stated that the neighbor could call code enforcement and file an affidavit stating the facts of what happened and they would go to the Code Enforcement Board and make their case. He stated that it would be determined whether or not there was a violation and if there was indeed one, the offending party would receive a \$200 fine. He stated that there was a process in place.

Commissioner Stowers stated that it was a nuance in the code that he discovered after first reading and he apologized for not seeing it before. He stated that he did discover it prior to the petition. He stated that anyone who had emailed him in the past week he had responded to. He stated that he wanted to get all of the facts out and make sure

that everyone knew that he was not taking the issue lightly, was not an idiot, and that he did not care more about one person than another. He stated that he cared about Ormond Beach and cared about the process, and if there was a process in place, it needed to be utilized.

Commissioner Stowers stated that the section went on to speak more about the affidavit and the fine of up to \$250 per incident. He stated that his initial comments had been about private property rights. He stated that he spoken to the woman who had been conducting the lessons in question and told her that his position was clear but there would still be hurdles for her. He stated that if the child crying was found by the Code Enforcement Board to exceed the language in the code, then there would be a \$250 fine. He stated that the fact was that once the fine was issued, the issue then would become financial and that perhaps that would lead to the desire to go to someone else's home in a different area to teach lessons to avoid incurring future fines. He stated that the issue would then work itself out amicably through a process and not through comments and half truths.

Commissioner Stowers stated that in his role, his burden was to sift through all the information, to work through the process, and to try and reach a solution. He stated that the saying about mediators was that with a true mediator both sides would be upset. He stated that he may end up being a mediator that night and both sides would be upset. He stated that he believed that both sides should be happy because there was a process that was predictable and they would not be infringing on private property rights or prohibiting an occupation throughout the city because of a few complaints. He stated that there may be those that worry that the city would be inundated with noise violations. He stated that he asked Ms. Joanne Naumann, Neighborhood Improvement Manager, how many noise violations there had been in 2011 and the answer was four. He stated that none were swimming pool related. He stated that there may be complaints in the future and they would work through that process. He stated that the situation was not one where duplicate regulations were needed; and if the noise ordinance was inefficient or ineffective, then that would be a separate issue that they would need to talk about. He stated he was not in favor of adding regulations on top of regulations that would impact everyone in Ormond Beach, when the issue could already be addressed in the current code.

Commissioner Boehm stated that one of the problems he had was that the ordinance would prohibit teaching swim lessons in your home, but if your neighbor had a swimming pool, you could teach swimming at your neighbor's pool for the same amount of time. He stated that you could still conduct the business anywhere other than in your own home. He stated that if it was allowed to happen, then in addition to the noise ordinance, the city would be requiring people to obtain a permit and the violation of that permit could result in the person losing that permit and also there would be an enforceability issue in addition to the noise ordinance.

Commissioner Boehm stated that a permit process would require the applicant to give information relative to what they were intended to do as an occupation and in what fashion. He stated that the city could have limitations on hours and means of control. He stated that he would argue, particularly when it came to infant swimming lessons that he would want, as a city, to know that the individuals who were allowed to instruct were certified by a recognized national organization. He stated that if they were not, then you would be potentially risking the lives of children by having uncertified and unqualified teachers. He stated that currently they had no way of knowing who was or was not qualified.

Commissioner Boehm stated that the issue with an outright ban would be enforceability. He stated that if someone complained, code enforcement would tell them to stop and go through the code enforcement process. He asked how that would have improved the noise ordinance by banning it altogether. He stated that he would rather see the city regulate swim lessons and use the noise ordinance to stop that issue. He stated that he would also add that the Homeowners Association could ban infant swim lessons; whereby Mr. Hayes advised that it did have the authority to do so. He stated that the particular issue at hand could be stopped by the Homeowners' Association (HOA) in that community without the additional step of the City Commission prohibiting it.

Commissioner Boehm stated that another concern he had was with residents who lived on five acres and did not have directly adjacent neighbors. He stated that a ban would also prevent them from teaching lessons even though it would not affect anyone around them. He stated that would be like using a cannon to shoot a squirrel. He stated that if

swimming lessons were not allowed, then it would be banned for people of all ages at all times and he thought that would be overkill and overregulation. He stated that he would rather see the lessons authorized and see the procedures that were contained within the ordinance apply to anyone who would want to teach swimming lessons in the city.

Commissioner Partington stated that he asked the City Manager earlier that day to let him know the original ordinance had been enacted in 1978. He stated that the law had made this type of business illegal in the City of Ormond Beach for 34 years. He stated that he had been confused because he received emails saying that the Commission was banning it when it actually had not been legal for 34 years. He stated that the origin of the proposed ordinance was that city staff, at the Commission's direction, was trying to make things easier for people, with less regulation, to conduct businesses out of their homes. He stated that at the first meeting there had been a complaint about noise; and in trying to be responsive to that complaint, he believed the situation became one where the removal of that business occurred. He stated that he agreed with Commissioner Boehm in that regulation, in order to protect the integrity of residential neighborhoods, was the appropriate way to deal with the issue instead of completely disallowing the lessons.

Commissioner Partington stated that they were still clumsily working towards their original goal and it had been a learning process for everyone along the way. He stated that it was important that the residential areas were protected and kept as separate as possible from the business areas. He stated that 7-Eleven stores or pet shelters were not allowed in the middle of neighborhoods. He stated that there were all kinds of businesses not allowed in residential neighborhoods, because that was where citizens lived and they wanted to protect the integrity of those living areas. He stated that the way that was done was with regulations, whether they were noise, parking, traffic, or otherwise. He stated that he was glad that both sides were present that evening and that they would hear from them. He stated that as the process continued, they would incorporate the public's input to make sure that their concerns were heard, balanced, and included into what would hopefully be a reasonable ordinance that regulated the issue in a fair and equitable way.

Mayor Kelley stated that he had received several hundred emails, many implying that the Commission was opposed to swimming. He stated that he had lived in the community for 32 years and that his daughter took swim lessons at 18 months old and his son took them at eight months. He stated that his wife and daughter both were Water Safety Instructor certified and had taught hundreds to swim. He stated that his wife swam on a high school state championship swim team and her father had held the unofficial underwater swim record for 35 years. He stated that he felt that there should be a law that everyone should learn to swim if they lived in Florida. He stated that he felt he could say for all of the Commissioners that they supported swimming and thought it was essential that people swim.

Mayor Kelley stated that the difficult question was balancing the rights of each person. He stated that this was a situation where you had to balance the right of one to do something and the right of another to not have that activity infringe on or adversely impact their rights. He stated that it was a difficult question to arrive at an answer. He asked the audience to please keep their comments direct and succinct as possible. He directed the audience that if a previous speaker had made comments similar to the ones they wished to make, they had the opportunity to say that they agreed with the previous speaker rather than repeat what had been said. He stated that as the Commissioners spoke about regulations, he thought about a conditional use permit and felt that such a permit could be granted for this type of activity.

Ms. Penny Pajak, 2 Cliffwood Circle, thanked the Commission and staff for the time they had taken on the issue. She stated that most people had read the emails and seen the videos. She stated that a compromise was fine and she did not want to get rid of swim lessons. She stated that the lessons should not be banned in Florida anymore than Montreal should ban ice skating lessons. She stated that she understood that in a residential area there did not need to be that type of noise. She stated that she wanted to work towards a resolution together. She stated that the following day would be the Fourth of July and that she was going to celebrate America's birthday knowing she answered the call to community service by volunteering to be a member of her homeowners' association board of directors. She stated that the past two weeks had been a multi-media, three-ring circus. She stated that she now found herself the victim of vicious cyber bullying by someone who was a pro-swim proponent and that she was being slandered on the internet and had sought legal counsel. She stated that all she

wanted was a good neighborhood to live in and to support the people in her HOA. She stated that the savage, slanderous, and false accusations against her would be cleared up; but if anyone wondered why good people did not want to get involved in government and make the community a better place, this was why.

Mr. Kevin Connors, 769 John Anderson Drive, stated that in 1968 he taught children to swim when they were six months old. He stated that he had many of them and their children tell him that if it was not for him that things may have been different in their lives. He stated that he agreed with the Mayor that anyone who lived in Florida should learn to swim. He stated that he did not believe in not having rights within your neighborhood or in a noise ordinance. He stated that he was a private person and that there was a reason why large fences were built. He stated that his main concern was for the Commission and staff try to work something out with the instructors. He stated that he was also not an advocate of having it in his backyard, but if it was a noise ordinance issue, then the Commission should go out and see how bad it was and whether or not it was bloodcurdling screaming or more of a neighbor issue. He stated that he did not know the answer as he had only heard about the issue recently in the newspaper. He stated that he proposed that the city staff or City Commissioners sit down with the individuals and work something out prior to making any decision on banning it to make it more amicable for a few individuals in a neighborhood. He stated that he knew the city would make the right decision and consider it properly.

Mr. Alan Burton, 915 Ocean Shore Boulevard, stated that he had five questions that he wished to present. He stated that his first question was whether the City of Ormond Beach owned and operated a swimming pool that provided swimming lessons. He stated that he felt it was fair to say that the city did not have a public facility or program that did so. He stated that he would deduce from that all swim lessons were performed on private property. He stated that his second question was whether restricting swimming, as proposed in Ordinance 2012-24, would help or hurt the instructor financially. He stated that he felt it was fair to say that the ordinance passed two weeks ago would hurt the instructor. He stated that his third question was whether the ordinance would increase or restrict the use of private property. He stated that he felt it was fair to say that it would restrict the use. He stated that his fourth question was whether the ordinance contained a complete listing of all home occupations. He stated that he felt it was fair to say that it did not contain an exhaustive list of all home occupations. He stated that his fifth and final question was whether the ordinance contained a complete listing of all prohibited home occupations. He stated that you could most likely answer yes which included swim lessons.

Mr. Burton stated that the City did not provide any public swim lessons, so he believed that all swim lessons were provided on public property and through private individuals. He stated that the ordinance would financially hurt those individuals. He stated that it may also hurt other occupations not currently listed on the ordinance that may be included in a gray area. He stated that the ordinance restricted property rights because a homeowner would be able to do less on their property as a home occupation. He stated that he felt there was a large issue with the prohibited occupations as well. He urged Mayor Kelley to table the ordinance that evening and review it with regard to creating a conditional use permit specifically for swim lessons, as he had mentioned. He stated that there was a bigger public policy issue regarding all home occupations and the furtherance of property rights.

Mr. Jim Pisors, 14 Old Canyon Lane, thanked the Commission for the opportunity to speak and stated that he would rather not be present that evening. He stated that the issue was a divisive one whereby where you stood on it would depend on where you lived, what was in your backyard, and how it affected you. He stated that he had spoken with the instructor of the swim lessons several times in the past year. He stated that he thought that she was a talented certified professional. He stated that the issue was not personal. He stated that he would not say a lot of what he had intended to, since Commissioner Kent had already done so. He stated that the issue was not about the program itself but where the business was conducted. He stated that he felt that everyone had the opportunity to see some of the video and what was being experienced in Ormond Lakes. He stated that the important thing to remember was that whatever the sound was and however many people were in the pool area, all of that noise was reflected off the back wall of the home and projected rearward on a cone, going to all of the properties behind it. He stated that if you were in the middle of the front street you would not hear it because the house was blocking the sound, and if you were behind the home you would hear a lot.

Mr. Pisors stated that in their community the distance the sound traveled to the nearest patio would be 50 feet and that the noise was incredible. He stated that the distance throughout Ormond Beach would be from him to Mayor Kelley. He stated that would be how close the pool and the neighbor's patio would be. He stated that the opportunity for someone to be offended by that noise would be pretty great. He stated that it may be that some of the instructors were so used to the noise that they accepted it as part of the process. He stated that they may not be aware of how much sound was going out to the neighbors. He stated that it was going out between 4:30 p.m. and 7:30 p.m., when many were sitting on their decks enjoying dinner or having conversation. He stated that in some parts of the community you could not do that anymore because of the noise.

Mr. Thomas Moyer, 4 Wayland Circle, stated that he agreed with what was said.

Ms. Pat Behnke, 15 Malayan Sun Bear Path, stated that she had been using her sound meter to record sounds in the Commission Chambers during the meeting. She stated that the highest reading was 93, when everyone was applauding, and the lowest had been 44. She stated that the average was 73 decibels. She asked how many people had heard a child scream. She asked if it was any louder than what had been heard that evening and she stated that it was indeed much louder. She stated that it would go well over 66 decibels any time a child screamed. She noted that the sound was amplified in the Chambers. She stated that to say the noise would be below the sound level would be pretty optimistic. She stated that the noise violation was her concern and that anyone with an iPhone could check the noise level to see if they had probable cause to make a complaint against a neighbor. She stated that there were also regulations for outside music which were very specific.

Ms. Behnke stated that she had nothing against swimming lessons. She stated she and her husband raised seven children, had 17 grandchildren, and eight great-grandchildren. She stated that there were all water people and sailors. She stated that all of her children learned to swim at very young ages. She stated that they learned to scream loud and kick hard if they needed help. She stated that if there were *no* public facilities *anywhere* for a child to get lessons then she would say that yes, it needed to be private, but as Commissioner Kent pointed out, there was public space. She stated that you could go down the street and have a private lesson with another child and it would not be like having lessons in your own home, which often were not one-on-one and would involve vehicles coming in and out. She stated that while she had no objections to swim lessons, to say someone's income was hurt because they were cited for a law that had been in effect for 34 years was ludicrous and did not hold much weight. She stated that she felt that the issue could be controlled by the noise ordinance and it certainly would behoove all the neighbors to make certain that they were not infringed upon as everyone was entitled to comfort and quiet in their own home all the time.

Ms. Deana Frechette, 3 Oselot Court, stated that she was obviously before the Commission in support of her teaching children to survive in the water. She stated that she appreciated the Commission's time and felt that most of them were listening to both sides and trying to do the right thing, with the exception of Commissioner Kent. She stated that she felt that he was taking it as a personal issue and showing a lot of passion towards one side. She stated that one Commissioner, privately on the phone, agreed with her, but none of them publicly at the meeting were completely on her side. She stated that she was a respectful neighbor and that her children were louder than any one child she had had in the pool at any given time. She asked if she had to put her children in the house if they were crying, screaming, or doing cannonballs in the pool. She stated that she did not understand the noise ordinance.

Ms. Frechette stated that she taught one student at a time and that she had all of her clients park in her driveway, even though the City of Ormond Beach allowed them to park in the road, she did not want to have her neighbors come home and have to drive around a car every day. She stated that she felt that Ms. Pajak had an issue with the sounds of children. She stated that Mr. Pisors had no idea how she conducted her lessons and to say that she threw a child in the pool to see what they would do was unacceptable and that she will be seeking legal counsel as that was slanderous. She stated that she was a Volusia County School nurse, a mother, and a grandmother. She stated that she protected children. She stated that she never set out to offend a neighbor and believed in the program because her niece had drowned and died. She stated that she wanted to save other children. She stated that if Ms. Pajak came to her as a neighbor and said that she was interfering with her game of Bunko because the children were loud she would feel bad and even though she might feel she was

obnoxious, would scale it back that night and try to go above and beyond to please her neighbor.

Ms. Frechette stated that she was not cited when Ms. Naumann came to her home. She stated that Ms. Naumann had said that she would not cite her because even though swimming lessons was an illegal home occupation, they would not be in a few weeks and she instructed her to come in after July 3 to apply for her permit. She stated that she was not cited until Ms. Pajak came and made slanderous remarks saying that she had group lessons. She stated that it was appalling that the Commission would make a decision based on Mr. Pisors' words at the previous meeting. She stated that she would rather have been shut down until the Commission decided. She stated that the students she had currently were floundering and that their lessons were not complete. She asked to be allowed to complete her lessons, at least for the children. She implored the Commission to not let the children drown because someone did not like the thought of her teaching from her home.

Mayor Kelley stated that he felt that the Commissioners were listening to everyone. He stated that it was a balancing act and what they would attempt to do was to balance the rights of each neighbor. He stated that they represented approximately 38,000 residents in the City of Ormond Beach and wanted to do what was fair and right for everyone.

Ms. Cathy Fedora, 6 Oselot Court, stated that she lived across the street from Ms. Frechette. She stated that she had two children and was often outside in the evening. She stated that she was not affected by the sound of the children screaming during the lessons. She stated that it was really unfortunate that the entire county and all of the news stations were involved in what was truly a neighborly dispute. She stated that the way the houses were built in that community was inconvenient for privacy and noise. She stated that the community was full of pools and children and there would be noise. She stated that there would be parents very passionate about teaching their children to stay alive since every other corner in the neighborhood had an open pool. She stated that there were also people who really wanted their privacy and quiet.

Ms. Fedora asked the Commission to explain to her why it was that there was no one circling the street when there were loud televisions and giant speakers out in the yard. She stated that it made the same amount of noise as the children and that she could hear Ms. Pajak's television in her family room which faced the opposite way of the back of her yard. She stated that she did not hear the children, because like Mr. Pisors said, they were behind her home. She stated that the original owners of the home in question left because they felt so encumbered, because they were made to know that they were making too much noise in their own backyard. She stated that she felt this would be a pattern with that home and she was concerned that the house would wind up sitting empty with grass growing wild. She stated that there needed to be an agreement on the noise ordinance, especially in the type of close community they lived in.

Mayor Kelley stated that the issue was not what children could do, but what one could do in a residential community as a business.

Mr. Ron Kahrer, 38 Emerald Oaks Lane, stated that he read about the issue in the paper and realized he knew the person they were speaking of. He stated that he wondered what was causing the problem now since it had not been reported before. He stated that it had gone on for years and that the Commission had not even known that the law existed. He stated that there were so many ordinances on the books that he did not know them either. He stated that where he lived there were many homes that had to have their lawn cut every day of the week, including Sunday. He stated that every day someone had their lawn being cut and the lawn care workers wore earphones to block the noise. He stated that they drove loud lawn mowers. He stated that the issue was obviously between neighbors. He stated that no one was calling the city about the noise from motorcycles. He then asked if any of the four noise complaints had been about motorcycles; whereby Mayor Kelley stated that more than one had been. Mr. Kahrer stated that noises occurred from motorcycles, lawnmowers, and homes being built. He stated that he would not be convinced that it was not a neighbor dispute. He stated that there was a problem when there was an ordinance that said if you did something voluntarily, for free, in your home, it was allowed but as soon as you charged it would be breaking the law. He stated that everyone wanted more freedom, not less, on their own property and did not like being told what to do all the time.

Mr. Raymond Blastic, 212 River Bluff, stated that he felt that Commissioner Stowers handled the noise ordinance very well. He stated that he also felt that was the place for

this issue to be resolved. He stated that he also agreed completely with Commissioner Boehm that no more regulations were needed.

Ms. Chantelle Losey, 65 Bluebird Lane, stated that she was a parent of two children who had attended the swim lessons. She stated that her main comment was that it seemed to be more of a neighbor issue than a city issue. She wondered if there was a way that it could be resolved without the city's involvement, such as with sound barriers. She stated that she was unsure if she would like to have it in her own backyard. She stated that she had a neighbor with a dog that barked constantly year round and a neighbor who worked in his garage on projects until late at night. She stated that if things like that were also prohibited then she would have to get rid of her dog and her husband, and she did not want to do that.

Mayor Kelley stated that the issue was the operating of a business in a residential neighborhood. He stated that dogs do bark and there was an ordinance for dog barking, that stated that if the dog barked for more than five minutes it could be reported. He stated that it was put on the books in 1995 when he was a Commissioner and that he had felt that it was ridiculous at that time. He stated now that he had neighbors that had dogs barking, he knew it might be a good thing to have.

Mr. Charles Genter, 58 Indianhead Drive, stated that the Commission should know his name by now, as he had sent them two emails. He stated that Commissioner Stowers might have received more than two. He stated that he felt that the issue was one for the entire city. He stated that no one wanted to ban swimming for infants but wondered where it should occur. He stated that he had felt that it should probably be in a public facility. He stated that, as a board member of the Ormond Lakes HOA, he would check the regulation adopted by the Indigo Lakes HOA banning swim lessons, to see if they could adopt it for their community. He stated that he wanted the Commission to remember to think about neighbors having courtesy for neighbors.

Ms. Joanna Kaney Olivari, 22 Minnow Drive, stated that she had lived in Ormond Lakes for five and a half years. She stated that Ms. Frechette was her neighbor two doors down for four of those years until she moved. She stated that her kids played in the backyard, and she could hear the children screaming during the lessons but that they were not bothersome to her. She stated that she understood that the ordinance dealt with home businesses, but wondered where it would go next. She stated that if home businesses that dealt with children were banned, would she be asked to leave if her kids screamed in a restaurant. She stated that she was worried that the HOA in Ormond Lakes would pass some ridiculous ordinance. She stated that it was a family community with lots of kids. She stated that she intended to have her three children learn how to swim. She stated that it sounded like a bitter neighbor was upset by the noise. She stated that a ban would spiral out of control because one person was trying to enforce something for the entire city. She stated that children made noise. She stated that someone who did not like the noise should move to a 55 and older community because then there would be no noise there.

Ms. Kaney Olivari's young daughter, AnnaBella, stated that she lived with her mother and two brothers, Rocco and Luca. She stated that she felt that children should learn how to swim because they were near lakes, rivers, and oceans. She stated that if children drowned it would be a big 'uh-oh.'

Ms. Lesley Whitt, 1 Lakebluff Drive, stated that she lived in Ormond Lakes. She stated that she used to live across the street from Ms. Pajak and felt that the issue was a neighbor picking on another neighbor. She stated that she had a birthday party for her nine-year old son and Ms. Pajak called the fire department rather than knocking on her door.

Mayor Kelley requested that Ms. Whitt keep her comments on the issue.

Ms. Whitt stated that she had a dog next to her that barked all day long and she knocked on the owner's door and asked them if they could control it at night. She stated that she felt that neighborly courtesies were missing these days and it should not be an issue for the Commission.

Mayor Kelley stated that he felt that some of the audience did not understand that the issue they were speaking of was operating a business in a residence. He stated that if a person moved into a residential neighborhood they expected it to be that way. He stated that as far as the comments relative to where this would lead, he lived his life in the here

and now, and not in the past or future. He stated that it was impossible to say that this would lead to the banning of other things.

Mayor Kelley stated that he had received an email that day from a gentleman stating that the person that was teaching swim lessons used the neighbor's pool next door to him and continued the lessons on the weekend. He stated that the man had said that he did not have a problem with it, that if he opened the door he might hear a scream, but was not bothered by it. He stated that he thanked the man for his email and told him that the issue was trying to find a balance between what was impacting the neighbors. He stated that two hours later the man called him and said he was sorry for the way in which he sent his nasty email supporting it and went back and listened to the tape that he had made on his back porch. He said that when he reached seven minutes of bloodcurdling screams it was more than he could bear to listen to. He stated that this was a person who lived in a home next door to someone teaching the same lessons in a different home in Ormond Lakes. He stated that the gentleman said that if he was inside he did not hear it, but he wondered if he would have to be confined into his house to avoid it.

Mayor Kelley stated that it was a business, not children at a birthday party. He stated that Ms. Behnke, who lived in Bear Creek, had once given him a comment that he used every time someone complained about airplanes. He stated that she said that she drove down Airport Road and across a railroad track when she left her home and then asked how she could not be expecting to hear planes and trains. He stated that you did not move into a community expecting that there would be a business operating there. He stated that he spoke to Mr. Ric Goss, Planning Director, who had stated that a conditional use permit could be constructed that would allow a permit for this type of swim lesson. He stated that they could allow swim lessons, of a general nature, not the infant swim, to go through a conditional use permit and be limited by time and day, or leave it as it was. He stated that Commissioner Boehm brought up an interesting point in that the instructor could come out and teach in a resident's home pool. He asked Mr. Hayes for his thoughts.

Mr. Hayes stated that he sensed that the Commission may want to allow swimming instruction as a conditional use, through another process, with certain conditions. He stated that they certainly could not do that tonight. He stated that if the Commission was inclined to do so, he would suggest that in paragraph 2 – prohibited home occupations, they would strike the word "swimming instruction." He stated that then they would have an ordinance that neither expressly allowed nor prohibited swimming instruction as a home occupation. He stated that would allow the ordinance to be passed at this meeting on second and final reading, which would adopt the rest of the ordinance. He stated that they could then direct planning staff to revisit the swimming instruction component as a conditional use or send it back to the Planning Board to develop an ordinance specifically as a conditional use and make sure that it had the restrictions in the regulation. He stated that any further violations could be dealt with, as Commissioner Stowers had indicated, from a code enforcement perspective, during the time that they were trying to work on the conditional use ordinance for further consideration. He stated that to summarize, if the Commission deleted swimming instruction as a prohibited use, the ordinance would neither expressly prohibit nor allow swim instruction as a home occupation, the ordinance could be adopted, and staff could revisit the other issue as a conditional use and bring it back to the Commission, and any further violations could be dealt with by code enforcement.

Mayor Kelley stated that he had not discussed these ideas with the Commission and would like to do so; whereby he asked whether they would be willing to agree with that course of action.

Commissioner Kent stated that he was not sure.

Commissioner Stowers stated that his hesitation with that approach was that they still had the noise ordinance on the books. He stated that whether or not there was a violation was irrelevant to what he was saying. He stated that, as he said earlier, with the existing noise ordinance, if something rose to the level of being obnoxious, someone had a process that they could go through. He stated that most of the time it worked out that someone would be neighborly and request that their neighbor tone the noise down. He stated that if it continued to escalate, as had happened in the issue at hand, there was still a process in place, whether or not there was a conditional use permit.

Mayor Kelley asked if the other Commissioners felt the same way.

Commissioner Boehm stated that he agreed with striking swimming instruction from the prohibited occupations but did not see the need for creating a conditional use permit for all swimming. He stated that they would be taking just that among all the other possible occupations in the city and creating a special category for it alone, because of someone teaching infants. He stated that there had not been a single complaint, email, or comment to talk about anyone above infant age being taught to swim. He stated he did not want to ban *any* swimming instruction in the city but if there was to be a conditional use permit for specifically Infant Swimming Resource (ISR), then he would agree with it.

Commissioner Kent stated that Ms. Frechette had mentioned that she felt he was taking the issue as a personal one. He stated that he did not know Ms. Frechette or Ms. Pajak, and that the only person he knew who lived in Ormond Lakes was Mr. Hayes. He stated that he was passionate about this issue.

Ms. Frechette began to interject from the audience; whereby Commissioner Kent asked her to please not interrupt. Mayor Kelley asked Ms. Frechette to please show Commissioner Kent the same courtesy that was shown to all the other speakers.

Commissioner Kent stated that Mayor Kelley's statements made a lot of sense to him. He stated that he bought his home in a residential zoned district. He stated that at one time the home behind him tried to operate a hotel out of their house and he had complained. He stated that he had been a Commissioner for nine years and had to believe that private infant swim lessons had been going on for at least that long in private homes in Ormond Beach. He stated that this was the first complaint that they had heard. He stated that when he heard it was a neighbor issue, he absolutely agreed

Commissioner Kent referenced the noise ordinance and that it was being said that it should be used to resolve the issue. He stated that they also had an ordinance on the books that said that you cannot operate that kind of home business. He stated that as he said last time, shame on staff, because if you were going to have a law and not enforce it, why would you have the law. He stated that if someone was breaking the law, you should make them stop. He stated that as far as starting a ban, there was not one in Ormond Beach. He stated that you can have a swim lesson in Ormond Beach, even though the past 34 years you could not have a swim lesson *business* out of a private home. He stated that you could receive a swim lesson at your home or the swim instructor can go to the homes of their clients. He stated he is scratching his head about the horrible rumor that they were banning all swim lessons.

Commissioner Kent stated that two weeks ago they approved an item that prohibited small engine repair because of the sound of the engine noise. He stated that he took offense when someone said he did not care about children, as he was a teacher and loved kids. He stated that for him it came down to operating a business out of a home and if he would not want to live next to that every day. He stated that Commissioner Boehm brought up a great point with the issue of acreage. He stated that he would like to let Mr. Goss come up with a feet requirement for a swimming pool to be from the adjacent property line. He stated that he also spoke with the City Attorney about how the city did not have a community pool, as Mr. Burton had mentioned. He asked if there was a possibility of the city looking into partnering two times a year with the YMCA and renting out a section of the pool so that the city could have their residents get their swim lessons there. He stated that he understood normal noises in residential areas, but residents should not have to deal with noises created by a business in a backyard.

Mayor Kelley stated that Commissioner Kent's suggestion of partnering with the YMCA was one that he had also thought of. He stated that he had thought about establishing a program where they would contract with someone at the YMCA during the summer months. He stated that Leisure Services could run the program, sharing the expense and the cost. He stated that the instructors could be contracted, as well.

Commissioner Partington stated that he was struck by the brokenness in the neighborhood. He stated that he knew that was sometimes the case with neighbors and HOAs. He stated that it was disappointing that there was an absence of kindness and tolerance. He stated that those things were sometimes difficult to come by when people lived very close to each other. He stated that it presented an opportunity for healing, forgiveness, and trying to work together. He stated that he grew up in Ormond Beach and thought of the city as a community, where despite there being problems and difficulties, they could be worked through together as residents to try and come up with a solution that allowed everyone's interests and passions to be represented. He stated that he loved the passion on both sides because it meant that everyone cared.

Commissioner Partington stated that if Ms. Pajak had been the only person complaining about the noise he would be more inclined to believe that it was just a neighbor versus neighbor dispute. He stated that while there still may be some element of that, he had heard from five or six other neighbors about bloodcurdling screams and the disruption of their days. He stated that he leaned towards allowing some kind of regulation of the business, if they were going to allow it, which would address the noise concerns, parking concerns, and put reasonable time constraints on the activity. He stated that it would still give the instructor the benefit of running a business in a neighborhood, which was something that had not been permitted for 34 years. He stated that in order to receive that benefit, burdens would have to be incurred that would address any nuisance problems that the business may impose on residents of the neighborhood who did not expect to have business type issues in their community. He stated that he was willing to take whatever amount of time it would take to get it right.

Mayor Kelley stated that when he spoke to Mr. Goss he found out that for a conditional use permit you had to send out mailings to residents within 200 to 300 feet of the property to obtain it. He stated that would be one easy way to determine whether a neighborhood wanted the business.

Commissioner Boehm stated that he would only add, in case of any confusion, that the ordinance being referred to from 1978 was a home occupation ordinance. He stated that it was being rewritten but that there had been an ordinance dealing with home occupations for 34 years. He stated that they were not creating a home occupation ordinance; all that the Planning staff was trying to do was rewrite it to bring it up to date. He stated that there were no occupations specifically listed in the earlier ordinance. He stated that it only described the uses without designating any occupation whatsoever. He stated that just for the clarification purposes, they were not writing a new ordinance. He stated that because swimming came up as an issue, they were spending a lot of time dealing with the swimming component. He stated that he had not received any objection from anyone concerning the remainder of the ordinance, so he agreed with Mr. Hayes that if they could remove swimming instruction from a prohibited use and not refer specifically to swimming at all, then maybe the rest of the ordinance could be taken care of that evening. He stated that he was not in favor of conditional use permits for *all* swim lessons or all types, but he may be for infant swim lessons.

Commissioner Boehm moved, seconded by Commissioner Partington, to strike swimming instruction from prohibited home occupation.

Commissioner Kent asked Mr. Hayes exactly what that motion would accomplish.

Mr. Hayes stated that it would not end the controversy. He stated that it would allow the ordinance to pass with the other home occupational aspects in it. He stated that it would neither expressly allow swimming instruction, infant or otherwise, nor expressly prohibit it. He stated that the ordinance would be subject to interpretation. He stated that the qualifying event would be that presumably staff would go back and revisit that issue specifically to develop some stricter regulations for those types of uses, whether the infant survival program or general swimming. He stated that there may be other types of uses that would be more appropriate for a conditional use process rather than permitted use by home occupation, which was what the ordinance proposed. He stated that in the meantime, if there were any other forms of violations, they could perhaps be addressed through the code enforcement process. He stated that it was not a cure all but would get everyone where they wanted to be, to some extent.

Commissioner Kent stated that he was confused by the statement that it would not be banned or permitted. He asked what, if it was neither of those things, it would be.

Mr. Hayes stated that it would then be subject to interpretation as to whether or not it would be allowable. He stated that if passed, the ordinance would replace the existing ordinance which did not allow the lessons. He stated that if it was not allowed as a use, then they would have to rely on the ordinance, based on interpretation of the Planning Director as to whether that use would be allowed. He stated that, based on the discussion that evening, the interpretation would probably be that it was not currently allowed but they would work through the process and bring it back before the Commission, so any violations would likely come before the Special Master code enforcement system because the use was currently not allowed as a home occupation, and also because of noise issues. He stated that Planning staff would work the issue back through the Planning Board process and come back before the Commission so that

regulations could be put in place that would address the acreage, zoning, parking, and those sorts of issues.

Commissioner Kent stated that his only concern was that would then make staff become the 'bad guy'; whereby, Mr. Hayes stated that staff was always the bad guy.

Commissioner Kent stated that in this instance, if it was due to staff's interpretation, he wondered if it would put the staff in a bad situation.

Mr. Hayes stated that it would. He stated that the options were to continue the ordinance as it was presented, or send it back to Planning staff to revisit the whole issue, which may include a major modification. He stated that in the meantime, the ordinance and regulations that had been in place for 34 years would remain in place, which would mean that the use would not be allowed. He stated that any violations would be handled by Code Enforcement.

Ms. Joyce Shanahan, City Manager, stated that essentially the ordinance in place currently said that home occupations must take place inside the home and that was really where the difference was. She stated that was why swimming lessons were currently not allowed. She stated that the issue would become whether the pool was part of the home, and if not, then they would be put in a position to decide whether or not they were allowed, and if they should be addressed as a code enforcement issue. She stated that she felt that was where staff would come down on it.

Mr. Hayes stated that the current provisions also provided that in addition to the home occupation being indoors, the occupation could not adversely affect the habitability or the value of surrounding properties, nor alter the essential residential character of the neighborhood. He stated there were also provisions involving traffic. He stated that they may want to work some of the existing criteria into the home occupation application process. He stated that if the ordinance was continued, the status quo would be the same until it came back. He stated that he was unsure whether any burning issue would require it be passed that evening.

Mr. Ric Goss, Planning Director, stated that he wanted to make a slight correction to Ms. Shanahan's comments. He stated that since 1978, they had always indicated that the home occupation use had to occur inside the building. He stated that, however, with the proposed ordinance that was presented three weeks ago, it said that "*home occupations are to be conducted entirely within a dwelling unit or an accessory building, and or accessory structure.*" He stated that the accessory structure would be the swimming pool. He stated that the idea was, when they first came to the Planning Board, to allow one student per session. He stated that he was confused as to whether swimming would be allowed one way or the other. He stated that he could assure them that he knew what the issue was, and he would never interpret swimming to be permitted as a home occupation if swimming was struck from the home occupation, unless they indicated that they had no problem with general swimming lessons and their problem lay only with the ISR. He stated that if they wanted conditional use criteria for the ISR, he understood.

Commissioner Kent stated that he also had been confused and that was why he asked for clarification. He stated that he was thinking that swimming lessons *could* occur in Ormond Beach and *could* occur at private residences, but the business just could not be run out of the home, for obvious reasons. He stated that he would preferred either voting on the first motion or continuing the item and letting staff come back with some options that referenced the acreage or partnering with a community pool. He stated that currently if someone had a legitimate complaint, it sounded like staff was confused on how to address it. He stated that if they removed the language that they had had for 34 years, if someone had a legitimate complaint, they would just have to live with it.

Commissioner Stowers stated that he felt that they should heed the recommendations that the Planning Board made and limit the students to two per session and proceed. He stated that if that happened, there would still be a noise ordinance in place so it would be an approved use and anyone could go through the process. He stated that if there was a neighbor that had a complaint, they could file it and sign the affidavit and go through the process. He stated that regardless of their decision, Ormond Lakes would probably proceed with discussion about adding a restriction in their covenants and restrictions. He stated that he continued to go back to the most efficient way to deal with the situation, which was through the noise ordinance.

Mr. Goss stated that staff had recommended one student per session and that the Planning Board had recommended two. He stated that at the last public hearing in May, the Planning Board had struck the limitation on the number of students completely. He stated that at the last meeting staff had recommended, based on the Planning Board's recommendation, that there were existing ordinances to enforce issues such as noise and parking. He stated that if the Commission wanted more regulations with regards to ISR, rather than just swimming lessons, they could make that distinction.

Mayor Kelley summarized that Commissioner Stowers wanted to remove the modifications to the ordinance that were done at the last meeting; Commissioner Kent wanted to proceed with the ordinance as presented and pass it on second reading; Commissioner Boehm wanted to strike "swimming" as a prohibited use and proceed to try and arrive at something that would satisfy everyone; and Commissioner Partington was inclined to go that same way. He addressed Commissioner Stowers and stated that he was not sure what the right answer was but that he wanted to try and balance the privacy of those in residential homes and the right of someone to have a home occupation. He stated that he knew what Commissioner Stowers was saying about the noise, but there were other conditions as well in the ordinance, such as a person that was renting a home had to have permission of the owner. He stated that he felt if they were to permit swim lessons, that there had to be criteria as to where and how they would be conducted. He stated that he did not want this type of lesson in his backyard. He stated that he wanted people to learn how to swim; but if it was a home occupation, there needed to be measures to ensure that the lessons were conducted safely, with the proper insurance, and regulations.

Commissioner Stowers stated that there was an ordinance in place for someone to complain about noise and they could follow that process.

Mayor Kelley stated that currently an occupational license to teach swimming could not be obtained.

Commissioner Stowers stated that Mayor Kelley had stated that Commissioner Boehm and Commissioner Partington were willing to remove swimming from the prohibited uses and make it a gray area issue. He stated that Mayor Kelley was asking him what his thoughts were. He stated that even if they added that process, there was still a noise ordinance regulation on the books and they would be back in the same place, even if someone obtained a conditional use.

Mayor Kelley stated that the issue at hand was to pass the amendments to the home occupation license section of the LDC. He stated that to amend the ordinance to remove "swimming" would allow the other items in the ordinance to move forward, as Commissioner Boehm suggested, and then if they needed to address the swimming instruction, there would be no ability to get a license to teach swimming. He asked Mr. Hayes whether that was correct.

Mr. Hayes confirmed that the amendments he spoke of were striking the "swimming instructions" from paragraph 2b. He asked if they also proposed to put back the word "swimming" in paragraph 1c.

Commissioner Boehm stated that his motion was to strike "swimming instruction" as Mr. Hayes suggested.

Mr. Hayes stated that he wanted to clarify because of a comment that the Mayor had made. He stated that the interpretative gray area would come in with the Planning Department. He stated that he thought that the Commission needed to do something further with the ordinance, whether this evening or by asking Planning staff to create some regulations as part of a conditional use. He stated that he felt that they would be well served to specify the criteria whether it be for swimming instructions or for infant survival instructions. He stated that his recommendation would be to remove all ambiguity from the regulations instead of leaving it open-ended. He stated that simply removing the words, as proposed in the motion to amend, would not accomplish what he believed to be the Commission's goal.

Mayor Kelley stated that he did not want to call the vote and have to start all over again.

Mr. Hayes stated that another option, to maintain the status quo of the regulations currently enacted, would be to continue the item and direct staff to re-examine the issue

as it related to creating a conditional use criteria for swim lessons and/or infant survival lessons.

Mayor Kelley stated that he would like to see the ordinance passed without swimming included.

Commissioner Stowers stated that, if he heard correctly, Commissioner Boehm and Commissioner Partington were open to the concept of a conditional use process for specifically ISR, but potentially swimming and ISR. He stated that he felt that the Mayor was in favor of a conditional use process for both. He stated that ultimately in terms of attempting to reach a resolution that evening, he would be comfortable making the modifications, striking the prohibition on swimming, which he agreed would be ambiguous, but he believed with pending ordinance doctrine, that they would like staff to put together a conditional use process for the swim lessons. He stated that hopefully it would not sit and fester if those actions were taken. He stated he was concerned with the possibility of not taking action and allowing three months to pass before it was resolved. He stated that both sides had said they would seek legal counsel and he felt that was unfortunate, as Commissioner Partington had said, working together and communicating can often show that people were not as unreasonable as you think they were. He stated that his hope was that if he was on board, there would be at least three votes to strike swimming and recommend that staff add a conditional use process for the specific use.

Mayor Kelley stated that there could perhaps be a workshop as well for the Commission to provide their views on that process.

Commissioner Boehm asked Mr. Goss how long it would take to draft a conditional use permit process relative to specifically ISR.

Ms. Frechette interjected that she did not just teach infants but also did swimming lessons. She stated that she taught up to seven years old.

Mayor Kelley stated that the law required that anyone speaking in the meeting be recorded and that he could not allow Ms. Frechette to have any more outbursts. He stated that Ms. Frechette must be recognized before she spoke and that she had received an opportunity to speak.

Commissioner Boehm stated that he wanted to address Commissioner Stowers' concern and perhaps amend his motion. He stated that he recognized that if they were to do what they were discussing, they would be preventing Ms. Frechette from continuing her occupation, until such time as a standard was created to which she could attempt to apply for. He stated that it was prohibited under the existing ordinance.

Commissioner Kent stated that it was prohibited at her home but that she could still go to her client's pools.

Commissioner Boehm stated that they would be preventing her from doing so at her home. He stated that for her purposes and Commissioner Stowers' purposes, he would like to know how long it would take staff. He stated that the next meeting would not be for several weeks. He stated that he would like a date of when staff could provide them with a proposed conditional use criteria and process.

Mr. Goss stated that to draft the provisions, go to a workshop, and hopefully have a consensus to take to the Planning Board, then come before the City Commission with their recommendations would take at least 45 days. He stated that if it was several weeks before they could get a work session, then it would be 45 days after those weeks passed; whereby Commissioner Boehm asked what Mr. Goss meant by "work session."

Commissioner Boehm stated that he felt that they could rely on staff to create something that they could discuss in a meeting. He stated that he did not see the need for a workshop.

Ms. Shanahan stated that it could proceed to the Planning Board after it was drafted.

Commissioner Partington stated that his understanding of Commissioner Stowers' indication was that, with pending ordinance doctrine, Commissioner Boehm's motion could be amended to include direction to staff to create a conditional use permit criteria

and process and that staff could issue a Business Tax Receipt for that business, whether conditionally or otherwise.

Mr. Hayes stated that he would have a problem with that, only because of the lack of legal standards, one way or the other. He stated that he felt that it was a losing proposition to put staff in that position. He stated that he thought that if there was a desire to allow this type of activity as a home occupation that evening, they should determine tonight what the criteria would be and put it in the ordinance. He stated that if the desire was to not allow it, then they needed to say that and prohibit it. He stated that if they wished to maintain the status quo, so that staff could work the issue through the process, then they could do that as well, but it would take some time to do so. He stated that the status quo was that it was not permitted. He stated that, from an enforcement perspective, it was difficult to rely on concepts like pending ordinance doctrine. He stated that it put staff in a very difficult position because you always knew there would be competing interests. He stated that the problem was that there were competing interests on both sides of the issue, and the challenge was to find an appropriate balance and to determine whether or not it was an appropriate business for a home occupation versus the privacy rights of the surrounding property owners, or if it should be allowed with or without restrictions.

Commissioner Boehm stated that he had adopted what Mr. Hayes had suggested. He stated that he could amend his motion to amend to remove the language of swimming instruction and to direct staff to come back to them within 45 days with a conditional use process recommendation, to be included within the ordinance and LDC amendment, dealing with both infant and other forms of swimming lessons. He asked if that would encompass and cover what was needed to give staff appropriate direction.

Mr. Hayes stated that he thought that was where the Commission was headed. He stated that they would be better served, from a staff perspective, to simply authorize the activity as a home occupation and that way there would be no nebulous concepts for staff to interpret. He stated that they could direct staff to go back and develop further regulations as a conditional use that they could bring back before the Commission. He stated that his suggestion for striking the word "swimming instruction" from the amendment last time was based on the understanding that, as the Planning Director had indicated, he would not issue a home occupation permit until further criteria had been established. He stated that he would be comfortable with that but not with relying on pending ordinance doctrine.

Mayor Kelley stated that he did not want to have swimming lessons that would adversely impact someone next door to them. He stated that he did not think that was fair for the neighbor. He stated that the only way to be sure that it would not impact their neighbor would be to not permit it, which was what they had done on first reading.

Ms. Shanahan asked whether the noise was the only issue and if adult swim lessons or lessons of children six year and older would be acceptable.

Commissioner Partington suggested limiting the lessons to no more than three students, keeping it between 10:00 a.m. and 5:00 p.m., reasserting the fact that the noise ordinance applied, possibly even at a stricter level, and allowing sound barriers if possible. He stated that those were the kinds of restrictions they were talking about and if they could hash them out tonight that would be fine with him.

Mayor Kelley stated that he would rather get everything done that night rather than drag it out; whereby Commissioner Kent agreed. He stated that he hoped all of the Commission wanted the same thing and stated that he thought they did.

Commissioner Kent stated that he agreed with everything that the Mayor said. He was in favor of allowing swim lessons but did not want them to negatively impact the neighbors.

Mayor Kelley stated that he believed that those not affected by the issue would probably support it.

Commissioner Stowers stated that he agreed with the comments regarding neighbors. He stated that the question posed to him a number of times was "What if this was in your backyard?" He stated that his response to that was that if it rose to a level where it was encumbering him in the enjoyment of his property, then he would call the city to let them know about the noise violation. He stated that prior to that, he would probably attempt to

talk to the neighbor. He stated that if they approved the swimming lessons as a home occupation use there would still be a means by which someone angry with the process could eliminate it.

Mayor Kelley stated that he did not want people to have to be angry with the process. He stated that he wanted to limit the lessons and the times.

Commissioner Stowers stated that one of the things he had heard was that to have a time limit was not inappropriate. He suggested 1:30 p.m. to 5:30 p.m. He stated that way you would not have it occur in the evening. He stated that having two students could also be a viable alternative to add to the regulations. He stated that he would argue that there were regulations about parking. He stated that he would imagine in the Ormond Lakes HOA documents, there were provisions against parking in the street. He stated that one of the earliest emails he received, before he was inundated with them, was someone saying something about sound barriers that a company produced exactly for this type of activity. He stated that perhaps they could add a regulation mandating the implementation of such sound barriers that were not visible from outside of the property.

Mr. Hayes asked if there was a desire to draw a distinction between swimming lessons and ISR lessons; whereby, Mayor Kelley, Commissioner Boehm, and Commissioner Kent stated that there was.

Mr. Hayes suggested that they might deal with the ISR piece aside from the swimming instruction in general.

Commissioner Partington stated that was fine with him, as well.

Mayor Kelley asked Mr. Hayes how he proposed to do so.

Mr. Hayes asked if it was the Commission's desire to allow swimming lessons excluding ISR as a permitted home occupation.

Mayor Kelley stated that he did not mind allowing them as long as it did not impact the neighbors; whereby Commissioner Kent stated he agreed.

Mr. Hayes stated that he would suggest allowing swimming lessons as a permitted home occupation and providing that ISR should be allowed by conditional use permit and then they would need to develop that process. He stated that it would not currently allow the Planning staff to issue a permit for infant survival lessons because there would not be established criteria. He stated that one could get a home occupation license for swimming instruction that did not include the ISR lessons.

Mayor Kelley stated that if that person conducted swim lessons and it violated any of the conditions, then they would lose the right to do that.

Mr. Hayes stated that it would create a code enforcement issue that could be followed up on through noise or parking.

Mayor Kelley stated that he knew it took a year to get a dump truck moved from code enforcement; whereby Commissioner Kent stated that it was a very long process.

Commissioner Kent stated that he wanted to allow swim lessons but wanted the ordinance to be written so the lessons could be shut down if there was a violation.

Mr. Hayes stated that there was a provision that was duplicated from another ordinance. He stated that it stated that two or more code enforcement violations in 12 months would result in automatically losing your home occupation. He stated that he did not have that language with him tonight, but similar language could be included in the ordinance; whereby, Commissioner Kent stated that he favored the language.

Mayor Kelley stated that he favored a provision to eliminate a person's business license if they violated the conditions of that license, which would occur more timely than one year or one and one-half years passing.

Mr. Hayes stated that due process had to be allowed for; whereby, Mayor Kelley stated that he did not believe it did with a business license.

Mr. Hayes stated that there had to be a process to determine that a violation occurred. He stated that those individuals then had to have the right to appeal that determination. He stated that there had to be an exhaustion of those remedies. He stated that otherwise it would leave to the unfettered discretion of the code enforcement officers whether or not a violation occurred. He stated that typically in these types of situations language had been adapted that said two or more code enforcement violations came before a special master.

Mayor Kelley stated that process would take three months; whereby Mr. Hayes stated that it usually did.

Mr. Hayes stated that city officials did not have the ability to go to a site, observe a violation, and yank the license; whereby, Mayor Kelley stated that did not seem fair to him.

Commissioner Kent stated that he had not responded to Commissioner Stowers' idea. He stated that he appreciated his tenacity, but his concern was the length of time with code enforcement for due process.

Commissioner Boehm stated that one other thing that was already included was that the licenses or permits would expire on September 30 of each year and would be subject to renewal requirements. He stated that it seemed like you would not be eligible for renewal if you had multiple code violations. He stated that if there were multiple violations within a year, then the license could not be renewed. He stated that period could even be six months.

Mayor Kelley stated that it would be excessive to get a license every six months. He stated that his other thought had been limiting the ISR for a period of time to only between May and August.

Commissioner Kent stated that he did not think they were discussing ISR.

Mayor Kelley asked if they were currently just speaking about swimming instruction; whereas Mr. Hayes stated that he was suggesting separating the two issues. He stated that he believed they were referencing swimming lessons at this time.

Mayor Kelley stated that the swimming lessons, in and of itself, would have to be restricted in a way that they would not incur noise violations.

Ms. Shanahan stated that the noise ordinance already existed; whereas Mayor Kelley stated that the noise violation would not make the occupation stop. He stated that the problem was that they could not make it stop.

Mr. Hayes stated that there had to be a process for that; whereby, Mayor Kelley asked if that would be true even if the license or permit was obtained fraudulently.

Mr. Hayes stated that there was a different process for that and they would be able to act more expeditiously. He stated that for ordinary violations, the code or conditions for which an occupational license was issued would become a code enforcement related issue.

Commissioner Boehm stated that, practically speaking, if someone was given a license, it was revoked because of multiple violations, and ineligible for renewal unless a special master granted that the violations were not actionable, within a year you had prevented that person from ever doing that occupation again in the city. He stated that there would not be multiple problems if you did not renew the license.

Mayor Kelley stated that there was probably no great place where they could make it all work out.

Mr. Hayes stated that he believed that the language that was developed for the other conditional use provided as well that on the second or third notice of violation, the license would be suspended for the duration of the special master hearing. He stated that if the master determined that a violation existed than it would be revoked. He stated that if the master determined that no violation existed, than they would be able to continue.

Mayor Kelley stated that the special master met about every other month; whereby Mr.

Hayes stated that it was once a month, and it could be more than that depending on the case loads.

Mr. Hayes stated that the ordinance tracked the state laws as related to the code enforcement process. He stated that he understood and appreciated that Mayor Kelley wished to expedite the process but that they were limited in terms of what state law would let them do. He stated that the violation had to be verified, the violator had to have an opportunity to cure the violation, and if they did not cure it within that time, they would receive a citation to appear before a special master at a hearing. He stated that the hearing was scheduled and they occurred on a regular basis of once a month. He stated that would probably take 30 days or so.

Mayor Kelley stated that they would recess the meeting briefly and allow staff during the break to work on an answer.

Mayor Kelley recessed the meeting at 9:46 p.m.

Mayor Kelley reconvened the meeting at 9:58 p.m.

Mr. Hayes stated that staff would propose that they would allow as a permitted home occupation swimming lessons *excluding* survival lessons. He stated that the survival lessons would come back before them in a separate ordinance as a conditional use where other criteria could be worked in. He stated that as it related to allowing swim lessons as a permitted home occupation, they would propose that the limitations be Monday through Saturday, no more than two or perhaps three people at a time, the hours of operation would be 9:00 a.m. and 4:00 p.m., the reason being it was a home occupation and a commercial business in a residential home and the surrounding property owners had rights to the private enjoyment of their residences as well. He stated that there had to be flexibility on both sides of the equation.

Mayor Kelley asked whether Commissioner Partington had any thoughts; whereby, Commissioner Partington stated that sounded good to him but he could not remember the specifics of the motion currently on the floor.

Mayor Kelley stated that the motion on the floor could be withdrawn.

Commissioner Boehm withdrew his amendment to the motion.

Mayor Kelley asked if the Commission was comfortable with that course of action.

Commissioner Kent stated that it made sense to him and that regular children would not scream like an infant.

Mayor Kelley stated that there was a unanimous agreement to permitting swimming instruction as a permitted home occupation use between the hours of 9:00 a.m. and 4:00 p.m., Monday through Saturday. He asked if the Commission wanted to limit the number of people.

Commissioner Stowers suggested three.

Commissioner Boehm asked Ms. Frechette what the biggest class she had was; whereby Ms. Frechette stated that it was one. Commissioner Boehm then also suggested three.

Mr. Hayes summarized the Commission's desire was to permit swimming instruction as a permitted home occupation, *not including* survival lessons, Monday through Saturday, from 9:00 a.m. to 4:00 p.m., with no more than three participants at any one time. He stated that the survival lesson component would come back to the Commission as a conditional use permit and it would take some time to work through that process. He stated that in the meantime infant survival or any survival lessons were not permitted.

Commissioner Kent wanted to clarify the definition of infant; whereby, Mayor Kelley stated that he thought that Mr. Hayes had meant simply survival lessons.

Commissioner Kent asked if all swim lessons were survival.

Commissioner Boehm stated that all beginning swim lessons would be.

Commissioner Kent stated that all swim lessons were learning to swim to survive so you did not drown.

Mayor Kelley stated that they were classified as ISR, drown proof, or other types for specific water survival lessons where the goal was to teach survival and not swimming skills. He stated that if that became an issue it could be straightened out by code enforcement.

Commissioner Partington moved, seconded by Commissioner Boehm, to amend the ordinance to allow as a permitted home occupation, swimming lessons, excluding all forms of water survival lessons, and that the lessons may occur Monday through Saturday between the hours of 9:00 a.m. to 4:00 p.m., with no more than three people at any one time.

Commissioner Boehm stated that they would also want to strike the term “swimming instruction” from subsection 2, prohibited home occupations, as part of the motion.

Mayor Kelley stated that it was the intent of the Commission to operate where it did not infringe on or adversely impact any neighbors. He stated that any neighbors should not feel guilty about notifying the city that their rights as a homeowner to enjoy their privacy and property were impacted. He stated that the Commission’s intent was to maintain a balance and that people had a right to learn to swim and a right to enjoy their homes.

Mayor Kelley asked City Clerk Joshua Fruecht to call the vote on the amendments.

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

Mayor Kelley asked City Clerk Joshua Fruecht to call the vote on the underlying motion as amended.

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

Mr. Hayes asked, for the record, for someone to make a motion and a second to instruct staff to rework the water survival lesson component as a conditional use.

Commissioner Boehm moved, seconded by Commissioner Stowers, to instruct staff to rework the instruction of water survival lessons as a conditional use.

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

Item #9A – Stormwater Ordinance

City Clerk Joshua Fruecht read by title only:

ORDINANCE NO. 2012-26
AN ORDINANCE RELATIVE TO STORMWATER MANAGEMENT; AMENDING SECTION 22-158, UTILITY FEE ESTABLISHED, OF ARTICLE V, STORMWATER DRAINAGE UTILITY, OF CHAPTER 22, WATER AND SEWERS, OF THE CODE OF ORDINANCES, BY REMOVING THE SUNSET PROVISION OF THE STORMWATER UTILITY FEE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Commissioner Boehm moved, seconded by Commissioner Partington, for approval of Ordinance No. 2012-26, on first reading, as read by title only.

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

Item #10– Unmanned Aerial Systems Testing at the Ormond Beach Municipal Airport

Ms. Shanahan stated that this item was a request for support for an individual who was looking to do some testing of unmanned aerial space technology at the Ormond Beach Municipal Airport (Airport).

Mr. Joe Mannarino, Economic Development Director, stated that the city was approached by a company called Aeroism, which was headquartered in Minnesota. He stated that their local representative, Mr. Paul Woessner, Vice President Program Development, Aeroism, was present and very familiar with the area. He stated that there was an opportunity to see if the Airport would be eligible for some testing for the unmanned aerial vehicles (UAV) and systems. He stated that the Federal Aviation Administration (FAA) would be looking to create six test sites throughout the United States. He stated that multiple places could be designated to do testing. He stated that the plan was to basically get more information so that they could present it to the Commission through a certificate of authorization to the FAA through Aerosim to do testing of the vehicles. He stated that the vehicles were very small with a wingspan of only about 15 feet. He stated that the vehicles were eight feet long and electric powered and would be confined to very small areas. He stated that the height limitation for their flights was about 400 feet. He stated that the Airport was in a good situation because it had a control tower, was close to Daytona Beach where there was radar, and had vacant areas around the airport where the testing could be confined. He stated that more detail was required and that Aerosim would be giving a presentation to the city in the middle of the month and that they needed to look at the city as a partner. He stated that if that went well they would come back before the Commission and get authorization to submit the certificate to FAA.

Mr. Woessner stated that Aerosim had two separate divisions of the company. He stated that they built flight simulators out of Minnesota and also operated a very large flight school in Sanford. He stated that it used to be called the Delta Connection Academy and was formerly owned by Delta Airlines. He stated that Aerosim was in the pilot training business in a very large way in Central Florida. He stated that the appeal of the Ormond Beach Municipal Airport was that it was uniquely geographically positioned very close to the ocean and close to a lot of uncongested real estate. He stated that they were looking to see whether Ormond Beach would be UAV friendly and if so, they would make a full presentation.

Commissioner Partington stated that he liked the idea of the project. He stated that Embry Riddle Aeronautical University now had a degree program in unmanned flight and that it was the wave of the future. He stated that he looked forward to hearing more about it and felt that Ormond Beach would be a good location for it.

Commissioner Kent stated that he agreed with Commissioner Partington's comments. He stated that he was excited reading the memorandum staff had put together regarding the UAVs. He stated that he would like to see one of them in action. He stated that it sounded small and noiseless.

Commissioner Stowers stated that it sounded like the beauty of the unmanned flights was that they could program in the flight paths. He stated that he was supportive of the concept.

Mr. Woessner stated that the first part of the exercise to get UAVs into the national airspace was to prove that they could operate within a controlled environment with manned airplanes in a control tower with class B, class C airspace.

Mayor Kelley thanked Mr. Woessner for attending the meeting and speaking to them.

Item #11– Reports, Suggestions, Requests

City Clerk Resignation

Ms. Shanahan stated that it was with an extremely heavy heart that she reported that City Clerk Joshua Fruecht had announced his resignation that day. She stated that Mr.

Fruecht had been recruited away from local government by a software development company specializing in city and county e-government. She stated that he and his family would move out of state for the opportunity. She stated that Mr. Fruecht had been an invaluable, creative, and dynamic part of the city's leadership team. She stated that he had brought them further and faster than she had ever dreamed. She stated that his work was evident in the Commission Chambers with the iPads. She stated that he was perhaps the single brightest man she had ever met, present company excluded. She stated that he had done an amazing job and deserved their thanks and appreciation. She stated that she would deeply miss him and wished he would have stayed longer because he could have gone far with the city. She stated that his potential was so great and she was so happy for him to achieve what he was dreaming to do, which was marry his love of technology and local government. She stated that it was Mr. Fruecht's last meeting, as he would be leaving before the end of the month.

Upcoming Meetings

Ms. Shanahan stated that July 30, 2012, would be the Operating Budget Workshop at 5:30 p.m. at the Senior Center. She stated that there was not a Commission meeting on July 17, 2012, and that the next Commission meeting would instead be on July 31, 2012. She stated that meeting would be when the Commission would set the tentative millage rate.

Florida Hospital demolition

Ms. Shanahan stated that the demolition of the Florida Hospital tower was tentatively scheduled for July 22, 2012. She stated that she would notify them as they received more information about that.

Capital Project Update

Ms. Shanahan stated that she had sent the Commission an update of the Capital Projects that were ongoing. She stated that last week she and Mr. Goss had met with the county to discuss possible Chelsea Place annexation. She stated that they discussed several ongoing issues.

Fourth of July

Ms. Shanahan stated that Leisure Services had worked very hard to prepare for the Independence Day Celebration, which would be the next day. She stated that the Mayor and Commissioners would be needed onstage at 9:15 p.m. to help ignite the fireworks.

City Clerk Resignation

Commissioner Boehm stated that he would echo what Ms. Shanahan had said about Mr. Fruecht. He stated that he was an amazing young man and that he did his best to bring them into the 21st century. He stated that he felt Mr. Fruecht succeeded to a degree that he felt might not have been anticipated. He stated that he would be very hard to replace.

Ormond Main Street Resignation

Commissioner Boehm stated that they had also received that week the notice of the retirement of Ms. Maggie Sacks, Chairman of Ormond Main Street. He stated that she had done a great job in bringing Ormond Main Street along and making it a viable organization and one that they worked very closely with. He stated that they would miss having Ms. Sacks working with them.

PAL Recognition

Commissioner Boehm stated that the Ormond Beach Police Athletic League (PAL) had won the 2012 Commissioners' Business Recognition Award for their work with the school district, specifically their after school reading program at Ormond Elementary and their forensic math and science program at Ormond Beach Middle School. He stated that in the past they had praised PAL for their athletic accomplishments and for their individuals winning state and national awards and now the organization as a whole had won a district wide award for its work with the schools. He stated that he welcomed the opportunity to praise the PAL program. He stated that they were really blessed to have a program of that capability within the city.

City Manager Recognition

Commissioner Boehm stated that the City Manager went one step beyond, which he noticed in the last Weekly Review. He stated that there was a picture of Ms. Shanahan on a ladder during a workday with the Building Inspection Division. He stated that it was those extra things that made her a special City Manager.

Fourth of July

Commissioner Boehm stated that the Fourth of July was a very special day in the city. He stated that they would have thousands of people in the city for the holiday and they would welcome everyone to come to the Fourth of July Celebration.

Magic Forest Playground Renovation

Commissioner Partington stated that the Magic Forest Playground Renovation playground design plans had been finalized and the renovation dates had been set. He stated that the Renovate Ormond Magic Forest Playground Committee (R.O.M.P.) had announced that the dates for volunteers to assist would be Tuesday, September 25, 2012, through Sunday, September 30, 2012. He stated that the Community Build Project had been designed by the firm Play by Design and their project manager would be on-site the entire time that the project was being built to oversee volunteers. He stated that there were plenty of volunteer opportunities available. He stated that monetary donations were still being accepted and that the 501C3 designation had either been achieved or was very close to being achieved. He stated that donations would be tax deductible. He stated that the information was in the Weekly Review, which was the City's newsletter. He stated that if someone did not receive the Weekly Review, they could ask to have it sent to them.

Movies on the Halifax

Commissioner Partington stated that Friday, July 6, 2012, would be Movies on the Halifax starting at 8:30 p.m. at the Rockefeller Gardens at the Casements. He stated the movie would be *Zookeeper*. He stated that Ormond Beach started the Movies on the Halifax first and he believed that they did them the best.

City Manager Recognition

Commissioner Partington stated that he also had noticed in the Weekly Review the City Manager's day with Building Inspection and Walking with the Manager. He stated that Ms. Shanahan continued to be extremely accessible and maintained an open door policy.

Parks and Recreation Month

Commissioner Partington stated that Mr. Carolin had mentioned earlier, as part of July being Parks and Recreation Month, the "Get Wild Calendar" with 31 days of July each having a different activity that could be taken advantage of in the City of Ormond Beach, was on page 14 of the Weekly Review and he would urge everyone to take a look at it. He stated that Commissioner Kent had earlier mentioned the amount of effort that was put into providing quality services for the children in the community. He stated that there were interesting exercise, educational, and arts opportunities that could be done. He stated that he hoped those opportunities would be taken advantage of.

City Clerk Resignation

Commissioner Stowers stated that he wanted to thank Mr. Fruecht for all that he had done in the short time he had been with the city. He stated that his last request to Mr. Fruecht was for him to display a picture of his new daughter Hannah from his iPhone onto the screens. He stated that he hoped that she would be able to make an appearance the next evening just for a few minutes.

City Clerk Resignation

Commissioner Kent stated that he was sad that Mr. Fruecht was leaving. He stated that the new company would be very fortunate to have him.

Habitat Home

Commissioner Kent stated that a new family had moved into a Habitat for Humanity Home and that had not happened in quite some time. He stated that the dedication had been that day.

Fourth of July

Commissioner Kent wished everyone a Happy Fourth of July and a Happy Birthday to America.

Homeland Security Activity

Mayor Kelley asked Mr. Steven Lichliter, Airport Manager, if he could speak about the CAP activity with Homeland Security now. He stated that two weeks ago, Ormond Beach had been selected as one of the cities in the State of Florida to conduct a major operation under the control and direction of Homeland Security. He stated that they could not inform him exactly what was done but that they had received very high marks

for the Civil Air Patrol. He stated that he wanted to recognize them for the organization of the activity.

Bid Specifications for North Halifax Drive Rehabilitation Project

Mayor Kelley stated that he did not pull item 7H but he wanted to ensure that when the city received bids for that project, that they tried to bring it in close to or under the low projected estimate.

Beach Activities

Mayor Kelley stated that the past week he ran the third annual Camp Kelley and had three girls from Nashville, two aged 11 and one aged 15, who had a blast enjoying Ormond Beach. He stated that he did something that he had not done in a very long time, which was taking them to the beach. He stated that they went to Fortunato Park on Friday night to watch the sunset and cooked out on the grill. He stated that the park had tables, water, restrooms, and was very peaceful. He stated the park was very active.

Mayor's Fitness Challenge

Mayor Kelley stated that he was working with Florida Memorial Hospital and the city to hold a Mayor's Fitness Challenge to change your lifestyle on January 14, 2013. He stated that they would be doing activities in October, November, and December. He stated that they would be doing a Walk with the Mayor during those three months. He stated that he had very good people working on it and he was very excited.

Parking Lot Entrance at Ormond Elementary

Mayor Kelley stated that it had been discussed at one of the workshops about the entrance for the parking off of Ormond Elementary. He stated that he and Commissioner Kent had been upset about the cost. He stated that there was a gate on the west side that went out onto Ridgewood.

Ms. Shanahan stated that they had looked at that and that the problem with the gate was that the slope of the sidewalk did not meet ADA requirements so they were still working on that issue.

Mayor Kelley stated that he hoped that could be worked out with ADA because it would take people right down to a traffic light where they could easily cross. He stated that he thought about it because there was a gate there. He wanted to find a way to make it work so that they could use the parking lot to help Main Street.

Mayor Kelley stated that he appreciated all the hard work that night on the home occupation issue. He thanked the Commission for pushing it through and believed they came to a good solution.

Item #12 – Adjournment

The meeting was adjourned at 10:28 p.m.

APPROVED: July 31, 2012

BY: _____
Ed Kelley, Mayor

ATTEST:

Lois Towey, Acting City Clerk