

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

November 5, 2008

7:00 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, Acting City Manager Ted MacLeod, City Attorney Randal Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend Brenda Edge, New Bethel AME Church.
- 3) Pledge of Allegiance.

4) **AUDIENCE REMARKS:**

5) **APPROVAL OF THE MINUTES** of the October 21, 2008, meeting.

6) **INTERGOVERNMENTAL REPORTS:**

A) Metropolitan Planning Organization

B) Volusia Council of Governments

C) Water Authority of Volusia

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. 2008-203 authorizing the execution of a lease agreement between the City of Ormond Beach and Prosperity Bank for the use of office space as a Police Department substation. (\$1 Annually)

B) Resolution No. 2008-204 pursuant to Section 14-98, Liens, of the City of Ormond Beach Code of Ordinances authorizing the imposition of a lien against the real property owned by Christine Liso Life Estate, and located at 612 S. Ridgewood Avenue, Ormond Beach, Volusia County, Florida (Parcel ID No. 4242-0C-00-0030) for costs incurred by the City to terminate or abate a site maintenance violation. (\$190)

C) Purchase order to Florida Power & Light and Economy Electric for a secondary power feed to the City's Water Treatment Plant. (\$96,100)

DISPOSITION: Approve as recommended in City Manager Memorandum dated October 30, 2008.

8) **PUBLIC HEARINGS:**

A) Resolution No. 2008-205 authorizing the execution and issuance of a Development Order for a Special Exception to allow a seven unit bed and breakfast on property located at 33 Ocean Shore Boulevard, said property being within the R-2 (Single-Family Low Density) zoning district; establishing conditions and expiration date of approval.

B) Ordinance No. 2008-48 amending Subsection A, Zoning Map, of Chapter 2, District and General Regulations, Article I, Establishment of Zoning Districts and Official Zoning Map, Section 2-03, Official Zoning Map and Zoning Districts, of the City of Ormond Beach Land Development Code, by rezoning a 19.22 acre parcel of real property located at 765 West Granada Boulevard from B-9 (Boulevard) to PBD (Planned Business Development); authorizing revision of the Official Zoning Map; approving a Development Order for a Planned Business Development to be known as "Granada Grande"; establishing conditions therefore; and approving and authorizing the removal of eleven (11) of the forty-seven (47) historic trees located on the property. (Second Reading)

C) Ordinance No. 2008-49 relative to the location of sexually oriented businesses, amending Chapter 1, Article III, Section 1-22, entitled Definitions; amending Chapter 2, Article II, Section 2-29, entitled Commercial (B-8); amending Chapter 2, Article IV, Section 2-57, entitled Special and Conditional Use Criteria, of the Land Development Code. (Second Reading)

D) Ordinance No. 2008-50 relative to sexually oriented business permit and license requirements; amending Chapter 12, Business Regulations, Article XIV, Sale or Rental of Sexually Explicit Materials, of the Code of Ordinances, by deleting in its entirety Sections 12-390, Definitions, 12-391, Businesses Prohibited, and 12-392, Regulation of the Sale or Rental of Materials Depicting or Describing Specified Sexual Activities or Specified Anatomical Areas, and adding Sections 12-390 through 12-413. (Second Reading)

- E) Ordinance No. 2008-53 adopting certain amendments to the Capital Improvements Element of the City of Ormond Beach Comprehensive Plan; providing when such amendments shall take effect. (First Reading)
 - F) Ordinance No. 2008-54 adopting certain amendments to the Future Land Use Element and the Conservation Element of the City of Ormond Beach Comprehensive Plan; providing when such amendments shall take effect. (First Reading)
 - G) Ordinance No. 2008-55 amending the Future Land Use Element of the Comprehensive Plan by amending the Future Land Use Map to change the designation of one (1) parcel of real property totaling 1.15 acres located at 211 North Tymber Creek Road from Volusia County “Urban Low Intensity (ULI)” to City of Ormond Beach “Low Density Residential (LDR).” (First Reading)
- 9) **SECOND READING OF ORDINANCES:**
- A) Ordinance No. 2008-51 relative to Business Signs, Chapter 3, Article IV, Section 3-47, Business Premise Identification Signs, of the Land Development Code, by amending regulations to include the B-5 Zoning District in those districts where height exceeding twenty feet (20’) is subject to the coordination of sign placement with architectural style, and to remove the special exception requirement for those zoning districts.
 - B) Ordinance No. 2008-52 relative to accessory dwelling units, Chapter 2, District and General Regulations, Article III, General Regulations, Section 2-50, Accessory Uses, to clarify permitted occupancy.
- 10) **FIRST READING OF ORDINANCES:**
- A) Firefighter Pension Ordinances:
 - 1) Ordinance No. 2008-56 of the City of Ormond Beach, Florida, amending Article III, Firefighters’ Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the Code of Ordinances; amending Section 16-45, Benefit Amounts and Eligibility; amending Section 16-47, Disability. (Benefit multiplier from 2.97% to 3.12%)
 - 2) Ordinance No. 2008-57 of the City of Ormond Beach, Florida, amending Article III, Firefighters’ Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the Code of Ordinances; amending Section 16-40, Definitions, by amending the definition of average final compensation; amending Section 16-46, Pre-retirement Death; amending Section 16-49, Optional Forms of Benefits; amending Section 16-67, Deferred Retirement Option Plan.
 - 3) Ordinance No. 2008-58 of the City of Ormond Beach, Florida, amending Article III, Firefighters’ Pension Trust Fund, of Chapter 16, Pensions and Retirement, of the Code of Ordinances; amending Section 16-45, Benefit Amounts and Eligibility; amending Section 16-47, Disability. (Benefit multiplier from 3.12% to 3.37%)
 - 4) Resolution No. 2008-207 authorizing the execution of a settlement agreement between the City and the Professional Firefighters, IAFF Local 3499.
 - B) Ordinance No. 2008-59 amending the annual budget for Fiscal Year 2007-2008 by amending the Pension Contribution Pass Thru Fund and the Workers Compensation Insurance Fund.
- 11) **RESOLUTION** No. 2008-206 appointing a member to serve on the Historic Landmark Preservation Board; setting forth term and conditions of service.
- 12) **DISCUSSION ITEMS:**
- A) Rate adjustment request from Flair Heating and Air Conditioning, Inc.
 - B) Birthplace of Speed logo.
 - C) St. Johns River Water Management District draft irrigation rules.
 - D) Homeless issues.

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13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

14) **CLOSE THE MEETING.**

Item #1 – Call to Order

Mayor Costello called the meeting to order at 7:03 p.m.

Item #2 – Invocation

The invocation was given by Reverend Brenda Edge, New Bethel AME Church.

Item #3 - Pledge of Allegiance

Item #4 – Audience Remarks

John DiLorenzo, 133 Sandcastle Drive, suggested developing a task force to earn a recognition award from the League of American Bicyclists for improvement in bicycle safety. Mayor Costello thanked him and stated that he is proud of what Ormond Beach is working to do. The Mayor explained that he is working with the Metropolitan Planning Organization regarding bicycle/pedestrian issues.

Laura Jones, 59 Amsden Road, spoke regarding a beach park. She suggested a financial partnership with the County, the City and citizens for development of a beach park.

Item #5 – Approval of the Minutes

Mayor Costello advised the minutes of the October 21, 2008, meeting stand approved without objections.

Item #6 – Intergovernmental Reports

Mayor Costello asked Ted MacLeod to write a letter to thank the Florida Department of Transportation for providing the road improvements at the intersection of US1 and State Road 40 at no cost to the City.

Item #6(A) – Metropolitan Planning Organization

Mayor Costello stated that at the November meeting, discussion will be conducted to determine whether or not \$75,000 to \$80,000 of “XU” funds can be used for beautification of the median on Clyde Morris Boulevard.

Item #6(B) – Volusia Council of Governments

Mayor Costello reported that the Smart Growth Committee continues to work along with the County for an overlay to preserve the lands everyone agrees need to be saved. He further reported that the Volusia Council of Governments is anticipating receiving a recommendation in January for the enhancement of the fire and emergency medical services by either increasing the benefits at the current cost of services or decreasing the cost of service while maintaining the current benefits.

Item #6(C) – Water Authority of Volusia

Commissioner Kelley commented that he had nothing to report at this time.

Item #7 – Consent Agenda

Mayor Costello advised that the action proposed for each item on the Consent Agenda was so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any one or more of the items separately.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve the Consent Agenda as presented.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes

	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Item #8(A) – Special Exception - 33 Ocean Shore Boulevard

RESOLUTION NO. 2008-205

RESOLUTION NO. 2008-205 AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION TO ALLOW A SEVEN UNIT BED AND BREAKFAST ON PROPERTY LOCATED AT 33 OCEAN SHORE BOULEVARD, SAID PROPERTY BEING WITHIN THE R-S (SINGLE-FAMILY LOW DENSITY) ZONING DISTRICT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated that Resolution No. 2008-205 was approved unanimously by the Development Review Board.

Commissioner Gillooly moved, seconded by Commissioner Kent, to approve Resolution No. 2008-205, as read by title only.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #8(B) – Granada Grande

ORDINANCE NO. 2008-48

ORDINANCE NO. 2008-48 AMENDING SUBSECTION A, ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, SECTION 2-03, OFFICIAL ZONING MAP AND ZONING DISTRICTS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY REZONING A 19.22 ACRE PARCEL OF REAL PROEPRTY LOCATED AT 765 WEST GRANADA BOULEVARD FROM B-9 (BOULEVARD) TO PDB (PLANNED BUSINESS DEVELOPMENT); AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS “GRANADA GRANDE”; ESTABLISHING CONDITIONS THEREFORE; AND APPROVING AND AUTHORIZING THE REMOVAL OF ELEVEN (11) DISEASED OR DYING HISTORIC TREES LOCATED ON THE PROPERTY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated that Ordinance No. 208-48 was approved unanimously by the Planning Board.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-48 on second reading, as read by title only.

Call Vote:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
	Commissioner Kent	yes
Carried.	Mayor Costello	yes

Item #8(C) – Amending Land Development Code – Sexually Oriented Businesses

ORDINANCE NO. 2008 – 49

ORDINANCE NO. 2008-49 RELATIVE TO THE LOCATION OF SEXUALLY ORIENTED BUSINESSES, AMENDING CHAPTER 1, ARTICLE III, SECTION 1-22, ENTITLED DEFINITIONS; AMENDING CHAPTER 2, ARTICLE II, SECTION 2-29, ENTITLED COMMERCIAL (B-8); AMENDING CHAPTER 2, ARTICLE IV, SECTION 2-57, ENTITLED SPECIAL AND CONDITIONAL USE CRITERIA, OF THE LAND DEVELOPMENT CODE; REPEALING ALL INCONSISTENT

ORDINANCES AND PARTS THEREOF; PROVIDING FOR SEVERABILITY;
AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-49 on second reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Item #8(D) - Business Permit and License Requirements

ORDINANCE NO. 2008-50

ORDINANCE NO. 2008-50 RELATIVE TO SEXUALLY ORIENTED BUSINESS PERMIT AND LICENSE REQUIREMENTS; AMENDING CHAPTER 12, BUSINESS REGULATIONS, ARTICLE XIV, SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIALS, OF THE CODE OF ORDINANCES, BY DELETING IN ITS ENTIRETY SECTIONS 12-390, DEFINITIONS, 12-391, BUSINESSES PROHIBITED, AND 12-392, REGULATION OF THE SALE OR RENTAL OF MATERIALS DEPICTING OR DESCRIBING SPECIFIED SEXUAL ACTIVITIES OR SPECIFIED ANATOMICAL AREAS, AND ADDING SECTIONS 12-390 THROUGH 12-413.; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2008-50 on second reading, as read by title only.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Item #8(E) – Comprehensive Plan

ORDINANCE NO. 2008-53

ORDINANCE NO. 2008-53 ADOPTING CERTAIN AMENDMENTS TO THE CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF ORMOND BEACH COMPREHENSIVE PLAN; PROVIDING WHEN SUCH AMENDMENTS SHALL TAKE EFFECT; REPEALING ALL INCONSISTENT ORDINANCES AND PARTS THEREOF; SETTING FORTH EFFECTIVE DATE.

Mayor Costello stated that Ordinance No. 2008-53 received unanimous approval from the Planning Board.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-53 on first reading, as read by title only.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #8(F) – Comprehensive Plan

ORDINANCE NO. 2008-54

ORDINANCE NO. 2008-54 ADOPTING CERTAIN AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE CONERVATION ELEMENT OF THE CITY OF ORMOND BEACH COMPREHENSIVE PLAN; PROVIDING WHEN SUCH AMENDMENTS SHALL TAKE EFFECT; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2008-54 on first reading, as read by title only.

Call Vote:	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
Carried.	Mayor Costello	Yes

Item #8(G) – 211 North Tymber Creek Road

ORDINANCE NO. 2008-55

ORDINANCE NO. 2008-55 AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING 1.15 ACRES LOCATED AT 211 NORTH TYMBER CREEK ROAD FROM VOLUSIA COUNTY “URBAN LOW INTENSITY (ULI)” TO CITY OF ORMOND BEACH “LOW DENSITY RESIDENTIAL (LDR)”; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated that Ordinance No. 2008-55 was approved unanimously by the Planning Board and the Volusia Growth Management Commission.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-55 on first reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Item #9(A) - Land Development Code Relative to Business Signs

ORDINANCE NO. 2008-51

ORDINANCE NO. 2008-51 RELATIVE TO BUSINESS SIGNS, CHAPTER 3, ARTICLE IV, SECTION 3-47, BUSINESS PREMISE IDENTIFICATION SIGNS, OF THE LAND DEVELOPMENT CODE, BY AMENDING REGULATIONS TO INCLUDE THE B-5 ZONING DISTRICT IN THOSE DISTRICTS WHERE HEIGHT EXCEEDING TWENTY FEET (20') IS SUBJECT TO THE COORDINATION OF SIGN PLACEMENT WITH ARCHITECTURAL STYLE, AND TO REMOVE THE SPECIAL EXCEPTION REQUIREMENT FOR THOSE ZONING DISTRICTS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated that Ordinance No. 2008-51 was recommended for approval by the Planning Board.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-51 on second reading, as read by title only.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Item #9(B) – Permitted Occupancy

ORDINANCE NO. 2008-52

ORDINANCE NO. 2008-52 RELATIVE TO ACCESSORY DWELLING UNITS, CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE III, GENERAL REGULATIONS, SECTION 2-50, ACCESSORY USES, TO CLARIFY PERMITTED OCCUPANCY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated that Ordinance No. 2008-52 follows the recommendation of the Affordable Housing Subcommittee.

Commissioner Partington moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-52 on second reading, as read by title only.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #10(A)(1) – Benefit Amounts, Eligibility and Disability of Firefighter Pension

ORDINANCE NO. 2008-56

ORDINANCE NO. 2008-56 OF THE CITY OF ORMOND BEACH, FLORIDA, AMENDING ARTICLE III, FIREFIGHTERS' PENSION TRUST FUND, OF CHAPTER 16, PENSIONS AND RETIREMENT OF THE CODE OF ORDINANCES; AMENDING SECTION 16-45, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 16-47, DISABILITY; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-56 on first reading, as read by title only.

Mayor Costello expressed his wholehearted support for this issue. He asked Randy Hayes, City Attorney, if the actuaries were wrong about the pension funding amounts and, therefore, the pension was not fully funded, would the firefighters or the pension have to make up the shortfall. He expressed that he wanted to insure that the City will not have to pay for any shortfall. He questioned whether the City needed anything stronger in the ordinance to state that should there be a shortfall in the 175 funds, current beneficiaries would have to make up the shortfall. He stated that if the State ever allows the use of the 175 funds for current benefits, not strictly for enhanced benefits, he would be in favor of the City using these funds for any potential shortfall. He expressed his support for the ordinance, if it was clear that the pension members, not the City, would make up shortfalls.

Randy Hayes confirmed that the issue is covered by the Settlement Agreement, which is a binding contract, with a proposal that it be cost neutral to the City. He stated that the pension members understand this issue. He stated that it was not necessary to include the City's intention, should the State release funds, and there was nothing in the agreement that would preclude using the funds in this manner.

Commissioner Gillooly confirmed her agreement that any shortfall would not be made up by the City.

Jim Shaw, President of Ormond Beach Firefighters Association, expressed that the membership of the Association had been advised of the conditions of the settlement agreement and had ratified the language of the agreement.

Call Vote:	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
Carried.	Mayor Costello	Yes

Item #10(A)(2) – Firefighters' Pension Plan - BAC-DROP

ORDINANCE 2008-57

ORDINANCE NO. 2008-57 OF THE CITY OF ORMOND BEACH, FLORIDA, AMENDING ARTICLE III, FIREFIGHTERS' PENSION TRUST FUND, OF CHAPTER 16, PENSIONS AND RETIREMENT OF THE CODE OF ORDINANCES; AMENDING SECTION 16-40, DEFINITIONS, BY AMENDING THE DEFINITION OF AVERAGE FINAL COMPENSATION; AMENDING SECTION 16-46, PRE-RETIREMENT DEATH; AMENDING SECTION 16-49, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 16-67, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-57 on first reading, as read by title only.

Commissioner Kelley questioned how the term “year” was defined. He stated that a year of service should be defined as either a calendar year or a fiscal year.

Jim Shaw, President of Ormond Beach Firefighters Association, stated that historically it has been the last five years of service; a year being twelve consecutive months, because those are most often the years of highest income.

Commissioner Kelley asked for an amendment to define a year as; a calendar year, a fiscal year, or an anniversary year with the selected five years used for calculation of benefits being consistent.

Kelly McGuire stated that she will research state laws to confirm that the suggestion is allowable by state law.

The City Attorney stated that there was an obligation to work with the union on this issue. He recommended approval on first reading, as read. He suggested that staff research this issue and submit their findings while at the same time, giving the union an opportunity to have input before the second reading.

Commissioner Kelley requested that his amendment be withdrawn at this time.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Item #10(A)(3) – Benefit Amounts and Eligibility and Disability – Firefighters’ Pension Plan

ORDINANCE 2008-58

ORDINANCE NO. 2008-58 OF THE CITY OF ORMOND BEACH, FLORIDA, AMENDING ARTICLE III, FIREFIGHTERS’ PENSION TRUST FUND, OF CHAPTER 16, PENSIONS AND RETIREMENT, OF THE CODE OF ORDINANCES; AMENDING SECTION 16-45, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 16-47, DISABILITY; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2008-58 on first reading, as read by title only.

Mayor Costello expressed that his comments under Item #10(A)(1) regarding any shortfall would not be the responsibility of the City would apply to this item.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Item #10(A)(4) – Settlement Agreement with the Professional Firefighters, IAFF Local 3499

RESOLUTION NO. 2008-207

RESOLUTION NO. 2008-207 AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE CITY AND THE PROFESSIONAL FIREFIGHTERS, IAFF LOCAL 3499; SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2008-207, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
Carried.	Mayor Costello	Yes

Item #10(B) – Annual Budget for Fiscal Year 2007-2008

ORDINANCE NO. 2008-59

ORDINANCE NO. 2008-59 AMENDING THE ANNUAL BUDGET FOR FISCAL YEAR 2007-2008 BY AMENDING THE PENSION CONTRIBUTION PASS THRU FUND AND THE WORKERS COMPENSATION INSURANCE FUND; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-59 on first reading, as read by title only.

Call Vote:	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
Carried.	Mayor Costello	Yes

Item #11 – Appointing a Member to the Historic Landmark Preservation Board

RESOLUTION NO. 2008-206

RESOLUTION NO. 2008-206 APPOINTING A MEMBER TO SERVE ON THE HISTORIC LANDMARK PRESERVATION BOARD; SETTING FORTH TERM AND CONDITIONS OF SERVICE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley nominated Michael McQuarrie.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2008-206, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Item #12(A) – Rate Adjustment for Flair Heating and Air Conditioning, Inc.

Commissioner Kent expressed concern about setting a precedent by approving a rate adjustment when a vendor misses the deadline for a rate adjustment request.

Commissioner Gillooly asked how many other contracts are out there that have missed a deadline for submitting a request for a rate adjustment.

Randy Hayes, City Attorney, stated that there are a vast number of contracts that allow a request for a rate adjustment but that very few miss the deadline. He reminded the Commission that they are under no obligation to approve any of the requests.

Commissioner Kelley stated that any vendor who was willing to wait for four years to request a rate increase, deserved the increase.

Commissioner Kent moved that staff bring a resolution before them at the next meeting to approve the rate increase request. Commissioner Kelley seconded the motion.

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Item #12(B) - Birthplace of Speed Logo

Mayor Costello asked Dan Smith, 9 Sunset Boulevard, to come forward and speak. Mr. Smith stated Buzz McKim's painting was the appropriate logo to be used.

Mayor Costello stated that he was open to a motion to approve the Birthplace of Speed logo as an auxiliary logo, not to replace the seal.

Commissioner Kent so moved, seconded by Commissioner Kelley, to approve the motion.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #12(C) – St. Johns River Water Management District Draft Irrigation Rules

Mayor Costello stated that St. Johns River Water Management District proposes restricting use of irrigation. Mayor Costello stated that he supports the proposal of the Water Authority of Volusia to exempt effluent reuse, as well as stormwater or wet detention sources. All of the members expressed agreement with the position of WAV.

Item #12(D) – Homeless issues

Mayor Costello stated that camping on a public right-of-way or obstruction of the flow of a public right-of-way should be illegal.

Michael Longfellow, Police Chief, reported that two draft ordinances have been presented to the City Attorney for review that would address this issue.

Mayor Costello stated his opinion was that the City's Code of Ordinances already contains restrictions regarding obstruction of a public right-of-way.

Chief Longfellow responded that the citation for the obstruction of a sidewalk allows for a Notice to Appear at a 30-day court date or a fine of \$250.00.

Randy Hayes, City Attorney, stated it is not a crime to be homeless; it's a life style. He pointed out that the government can regulate conduct; it can not regulate life style. He said the City has ordinances that can be used. He remarked that this homeless person under discussion has the same rights as everyone else but the difference being that any person has to comply with the law. He stated that the problem in this situation is that law enforcement officers respond to a complaint, but the situation may have changed; so by the time they arrive, there is not enough to warrant a citation.

Mayor Costello stated he hopes the ordinances do not allow overnight camping on a public right-of-way. He expressed his opinion that no obstruction is allowed; that this person's belongings do not allow any one else to safely pass, and that constitutes an obstruction.

Commissioner Gillooly stated that while our residents and business community need to be protected, the homeless have rights; and that the problem is growing due to the current economy. She suggested that the Commission consider a workshop conducted by the Star Center to assist the City in understanding the issue, what the legal issues are, and what preparations can be made to deal with this increasing problem.

Mayor Costello stated he supports assistance for the homeless but feels this particular situation is about obstruction of the City right-of-way. He stated that the sidewalk is not a place for personal items when businesses can not put their signs on the sidewalks.

Commissioner Gillooly explained that there is a larger issue to be dealt with, not just this individual.

The City Attorney explained that there is no comparison between signage and the personal property of a homeless person. Mr. Hayes said that the homeless man has a constitutional right to be on the sidewalk and to have his possessions on the sidewalk; that's the law. Mr. Hayes explained that the City can regulate conduct, such as camping or unsafe obstructions on the sidewalks. He remarked that this recent situation is directed at this individual homeless person. He stated that this homeless man has the legal right to move through town, and the City is not going to violate the man's civil rights.

Commissioner Kelley stated that he is speaking to this one particular situation and that he feels the majority on the streets choose to be homeless. He questioned what the City can do when the people refuse help. He questioned why he could not step onto the road from the sidewalk while holding a sign, but this man was allowed to obstruct the sidewalk with his personal

belongings. Commissioner Kelley asked what the value was of citing and fining someone when there is no chance to collect.

Randy Hayes explained that in a class action suit against the City of Miami brought by the Coalition of Homeless, the courts were pretty harsh against Miami by determining that activities such as cooking outside or on sidewalks, and camping outside are necessary essentials of life and therefore, rights of the individual.

Commissioner Kent reminded the Commission that the City does allow some cooking on the sidewalks and in the park by food vendors at the July 4th celebration. He expressed that a choice of lifestyle is relative. He stated that he wanted to ensure that we are compassionate for these people, but he does not want to put out the welcome sign.

Commissioner Partington stated that the City has faith based organizations that can get involved and make a big difference. He said that he appreciates how responsive the Commission is to the concerns and complaints of the residents and feels that it is incumbent on the Commission to do whatever can be done to properly address this issue, including reaching out to other government agencies and other non-profit organizations.

Item #13 – Reports, Suggestions, Requests

Bridge/Bicycle Safety

Commissioner Gillooly asked if anything can be done to provide a physical structure on the bridge to protect cyclists without obstructing traffic to prevent another incident such as the recent fatal accident.

Mayor Costello stated that he will ask at the Metropolitan Planning Organization what might be done to the bridge to help prevent further incidents.

Oceanfront Park Memorial

Commissioner Kent asked Ted MacLeod about the situation with the memorial bench on Granada Boulevard.

Mr. MacLeod explained that the bench had been removed to repair damage done by vandals and would be replaced when repairs were completed.

Bridge/Bicycle Safety

Commissioner Kelley asked if Florida Department of Transportation would allow a yellow line to designate the bicycle lanes; although he noted nothing could make a difference when the driver takes their eyes off the road.

Human Resources Director

Ted MacLeod stated that Lorenda Volker, Human Resources Director, was leaving the City as of December 1, and he was working on getting an experienced, part-time, temporary Human Resources person to fill in until a replacement can be found.

Off-Beach Parking

Mr. MacLeod stated that discussions with the County regarding the acquisition of property at Ellinor Village for off-beach parking resulted in agreement to consider equal cost sharing, but the County was not willing to finance the City's portion. He asked if the Commission was interested in proceeding with the acquisition.

Mayor Costello stated that he had spoken with one of the owners and the property is under contract to purchase in January. The Mayor stated that he is willing to vote on purchasing the five acres for \$5,000,000 with the City's portion being \$2,500,000 with owner financing for ten years on \$1,500,000, along with the County's portion of \$2,500,000. He asked the issue be put on the agenda for the next meeting.

Commissioner Gillooly asked if the County has agreed to partner the purchase and why would the City would consider purchasing commercial property for a non-revenue producing use.

Commissioner Partington stated that he feels this is not the time financially to spend \$5,000,000. He also stated that he is not sure this is the property to consider because the citizens want to park on the beach itself. He expressed concern about having to act quickly on the issue; and until there was a referendum from the citizens, he is not going to support it.

Commissioner Kelley stated that he wanted to wait to discuss the issue. He does not like spending \$1,000,000 for the initial investment in this economic climate and wants to wait for a citizens' referendum.

Mayor Costello requested that off-beach parking be included on the next agenda as a discussion item.

Nova Community Center Property

Mayor Costello stated that he continues to support moving the ball field on the east side of Nova Road to the west side for the appropriate development.

City Manager Selection

Mayor Costello expressed gratitude for Eugene Miller's efforts in the City's search for a City Manager. He reminded the Commission that they will select the new City Manager at the November 18 City Commission meeting. He explained that he wants the Commission members to discuss each of the finalists before a vote is taken.

City Staff

Mayor Costello reminded the Commission that the City has an excellent staff, and when the Commission has interaction with staff members, they should remember to express their support for their outstanding efforts.

Item #14 - Close the Meeting

The meeting was adjourned at 9:14 p.m.

APPROVED: November 18, 2008

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk