

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

August 22, 2006 5:30 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Theodore MacLeod, City Attorney Randy Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Discussion Regarding Court Order.
- 3) Close the meeting.

Item #1 - Call to Order

Mayor Costello called the meeting to order at 5:30 p.m.

Item #2 - Discussion Regarding Court Order

Mayor Costello reported the judge's ruling on the CAN DO motion came in today at 3:30 p.m.

Mr. Randal Hayes, City Attorney, explained the order from the circuit court on CAN DO's motion for temporary injunctive relief or writ of mandamus. He reported the City prevailed on the temporary injunctive relief, but lost on the mandamus. Mr. Hayes explained the effect of the ruling was that the City was being compelled to place the proposed Charter amendment on the ballot. He stated neither he nor Mr. Pelham had the opportunity to study the order, but they would do so and meet on Thursday morning to try to determine possible options. Mr. Hayes noted possible options would be to appeal, in that he believed there were a number of appealable issues in the order, or to comply with the order. He explained to comply with the order the Commission would have to approve a resolution that would place language on the ballot, which would be difficult to do because he did not know what language to place on the ballot, and this order did not provide any guidance. Mr. Hayes requested the opportunity to study the order and bring back options; however, his recommendation would be to seriously consider an appeal. He stated more would be known on Thursday, and he recommended reconvening the meeting Thursday evening.

Mayor Costello summarized the options were to reconvene the meeting on Thursday, vote to appeal the decision, vote to comply with the decision, or vote to appeal and vote; however, the ramifications were unclear.

Mr. Hayes stated that at this point staff had not fully studied the order, so he was not certain of the options that may be offered. He noted to competently advise the Commission he requested an opportunity to study the issue and reconvene on Thursday.

Commissioner Gillooly asked how reconvening the meeting would affect the timing with the County deadline to place the item on the ballot.

Mr. Hayes stated that initially the City was operating under the premise that the deadline was August 25, but he learned late this afternoon that the elections supervisor would allow September 1 to be the deadline. He noted another aspect of this order was that the City was being required to place the initiative at either the next general election or a special election called for such purpose.

Commissioner Partington stated he could wait until Thursday night for a recommendation, and he understood the City's counsel and co-counsel could not have had time to review the issue properly. He noted he would be willing to wait until Friday, if necessary. Commissioner Partington asked if there was an actual deadline to provide the necessary documentation to the Supervisor of Elections.

Ms. Veronica Patterson, City Clerk, reported she spoke to Ms. McFall this afternoon who indicated September 1 was the date she gave the County Council for their ballot language, and that date would apply to the City.

Commissioner Kent stated he believed Mr. Hayes did need to be rushed on this in that he has had this since April, and the judge gave a ruling today. He noted his objection to waiting until Friday, but could accept Thursday at the very latest. Commissioner Kent questioned what Mr. Hayes did not understand about: "the next general election or a special election called for such purpose." He reported this was a huge win for Ormond Beach residents, and he was pleased with the ruling. Commissioner Kent advised he was ready to put this on the ballot tonight.

Commissioner Kelley stated it would be difficult to examine the ruling and provide options with so short a timeframe. He reported his opinion remained unchanged that this would be proven to be unconstitutional, and it would be prudent to wait for counsel to consult to determine options for the Commission. Commissioner Kelley questioned if the City would be required to fix the language. He advised he considered the language to be confusing and backward. Commissioner Kelley stated to place something on a ballot that was unconstitutional would be wrong, causing the City to lose either way.

Mr. Hayes noted he believed there were a number of appealable errors in this order, and he wanted an opportunity to better clarify those errors. He urged the Commission to consider

appealing the decision now, and he would do so on Thursday. Mr. Hayes stated the order would destroy home rule powers. He advised the legal issue was whether the referendum power was consistent with, or if it would violate certain constitutional powers that this body possessed under Chapter 166 of the constitution. Mr. Hayes pointed out this order touches on some of these underlying issues, but he needed to understand the full impact of this order on those issues. He noted another concern was that the order touched on some of the constitutional matters in a more substantive manner than he expected, and he wanted to make certain that in the event this body decided to place the question on the ballot, the City would not waive the right to further contest those issues.

Mayor Costello explained two Commission members favored waiting until Thursday and Commissioner Kent indicated he was ready to vote. He asked Commissioner Gillooly for her opinion on the issue.

Commissioner Gillooly stated her initial concerns still remained with regard to the ballot language. She noted she was available Thursday or Friday for a meeting. Commissioner Gillooly requested additional information when the Commission would meet again regarding whether the City Attorney could prepare the language in time to meet the September deadline.

Mr. Hayes reported should the Commission direct him to do so, he would make sure it was done.

Commissioner Gillooly stated that whatever the verdict on this issue was, there was still the underlying question making it important to clarify this to the public.

Mr. Hayes concurred with Commissioner Gillooly's statement. He stated he did not know what impact this would have to those underlying issues. Mr. Hayes reported in past Commission meetings he heard a desire to place the language on the ballot exactly as it was received from CAN DO. He stated the Commission must decide what language to put in the resolution to transmit to the elections supervisor. Mr. Hayes noted the ballot language could be changed, but that would be guessing the intent. He advised the Commission did not have the luxury of simply submitting the flawed language as proposed because the law was clear that the City would have an obligation to prepare "the proper ballot language," meaning that if there were defects, the City would have to find a way to fix the language, and he was not sure how to do that with this language. Mr. Hayes stated should he be directed to place this on the ballot, he would find a way to comply.

Mayor Costello summarized that three Commission members recommended meeting Thursday at 5:30 p.m. He clarified that he favored voting, appealing, and placing the exact language on the ballot. Mayor Costello stated he wanted this as an option to be presented to the Commission on Thursday. He advised he wanted to reserve all rights that would be granted to the Commission with an appeal informing the courts the City would not be waiving any rights by proceeding with the vote.

Mr. Hayes reported it would not work that way, but he would bring a few resolutions for the Commission to consider. He stated at one time there was a discussion regarding the possibility of the Commission sponsoring a companion ballot question. Mr. Hayes reported he was not certain the timeline would allow that to occur. He noted given the language in the order, it appeared to give the Commission the discretion to place a question on the ballot at the next general election or a special election; therefore, it provided some flexibility so he was not certain there was any real significance to the elections supervisor's deadline.

Mayor Costello stated an additional option would be for a companion amendment to be added for a special election in that it could not be prepared in time for the general election. He pointed out that he originally mentioned the possibility of a companion amendment, but he would no longer support a companion amendment and would support only placing the CAN DO amendment on the ballot. Mayor Costello reiterated he was absolutely against the CAN DO amendment, but he was for placing it on the ballot in November.

Commissioner Kent reported he was pleased to hear Mayor Costello indicate that he would not support a companion amendment. He stated if a companion amendment was added he had the following questions and comments: what would happen if both amendments were approved, two questions would be confusing to the voter, and why would the Commission need a Charter amendment to control something they could already change. Commissioner Kent reported Mr. Hayes stated that tonight and Thursday his recommendation would be to appeal. He asked if the Commission could instruct Mr. Hayes to work with CAN DO from now until Thursday to examine the ballot language to create language that would be acceptable.

Commissioner Kent moved for Mr. Hayes to work with CAN DO to determine if any changes could be made to the language. The motion died for lack of a second.

Mayor Costello reported the reason he did not favor Commissioner Kent's motion was because no matter what changes were made, if it was not passed, the Commission would be accused of manipulation.

Commissioner Partington moved, seconded by Commissioner Kelley, to recess the meeting to Thursday, August 24, 2006, at 5:30 p.m.

Commissioner Kent asked if the people would be permitted to speak since a vote would be taken.

Mayor Costello stated this vote was just to continue the meeting so he would not permit speakers tonight; however, he would allow speakers on Thursday when an actual decision would be made.

Mr. Hayes noted, procedurally, this would be considered a recess.

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

Item #3 - Close the Meeting

The meeting was adjourned at 5:53 p.m.

APPROVED: _____ September 6, 2006 _____

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk