

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
APRIL 16, 2024 – 5:00 P.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:00 P.M.
- II. INVOCATION** Councilmember Jeff Boyd
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Jeff Boyd
Mayor Tony Kennon

Absent: Councilmember Joni Blalock

V. CONSIDERATION OF AGENDA

Motion made (Silvers/Johnson) to approve the agenda as written. Vote unanimous in favor.

VI. CONSIDERATION OF PREVIOUS MINUTES

Regular Council Meeting 03/19/2024
Committee of the Whole 03/19/2024

The reading was waived and minutes were approved as written.

VII. REPORTS OF OFFICERS/COMMITTEES

- | | |
|---|------------|
| 1. <u>City Administrator – Ford Handley</u> | No report |
| 2. <u>Director, Public Works – Tim Tucker</u> | No report. |
| 3. <u>Director, Community Development – Adam Roberson</u> | No report. |
| 4. <u>Chief, Police Department – Steve Brown</u> | No report. |
| 5. <u>Chief, Fire Department – Jeff Smith</u> | No report. |
| 6. <u>City Clerk – Renee Eberly</u> | No report. |
| 7. <u>Director, Finance – Ford Handley</u> | No report. |
| 8. <u>Parks & Recreation – Nicole Ard</u> | No report. |
| 9. <u>Director, Utilities – Jeff Hartley</u> | No report. |
| 10. <u>Director, Coastal Resources – Phillip West</u> | No report. |
| 11. <u>Librarian, Public Library – Meagan Bing</u> | No report. |
| 12. <u>Director, Municipal Court – Pam Davis</u> | No report. |
| 13. <u>Director, Expect Excellence – Ford Handley</u> | No report. |
| 14. <u>Mayor/Council</u> | No report. |

VIII. AUDITING OF ACCOUNTS

Motion made (Mitchell/Boyd) to certify that cash requirements with no related interests are within budget and appropriate for payment. Vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).**

Motion made (Mitchell/Johnson) to certify that cash requirements with related interests in Swift Supply are within budget and appropriate for payment. Vote revealed: Silvers, abstain; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (4-0-1).**

IX. PRESENTATIONS

X. RECOGNITIONS

1. Recognition of Candy Martin, retiring city employee. Renee Eberly, City Clerk, read a Certificate of Recognition aloud honoring Candy's 21 years of service at the City Hall front desk. Council announced that Candy's retirement party will be held this Thursday, April 18th, from 4:00 to 6:00 P.M.

XI. UNFINISHED BUSINESS

XII. NEW BUSINESS

Miscellaneous

1. Approval of a Lounge Retail Liquor Class I License Application by Shore Thing Cigars, LLC, for Shore Thing Cigars, 4790 Wharf Parkway, Spaces 101 and 103. **Motion made (Silvers/Mitchell) to approve the liquor license.** Vote unanimous in favor. **Motion passed.**
2. Approval of a Restaurant Retail Liquor License Application by Pier House Restaurant Bar Orange Beach Inc. for Pier House Restaurant Bar Orange Beach at 22703 Perdido Beach Boulevard. **Motion made (Mitchell/Boyd) to approve the liquor license.** Vote unanimous in favor. **Motion passed.**

Resolutions

1. Resolution appointing Jeffrey F. Smith as Fire Chief for the City of Orange Beach, Alabama. **Motion made (Silvers/Johnson) to adopt the resolution.** Ford Handley, City Administrator, introduced Chief Smith who began employment with the Orange Beach Fire Department on July 19, 1996. Chief Smith expressed his gratitude to Mayor and Council. Vote unanimous in favor. **Motion passed.**
2. Resolution supporting the Orange Beach Library children's library materials policy. **Motion made (Johnson/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
3. Resolution authorizing the execution of a task order with McCollough Architecture, Inc., to provide design services for Roof Replacement at the Library in an amount not to exceed \$18,500. **Motion made (Mitchell/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
4. Resolution authorizing the execution of a task order with McCollough Architecture, Inc., to provide design services for Roof Replacement and Addition at the Senior Center in an amount not to exceed \$11,700. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
5. Resolution awarding the bid for Softball Field Light Installation at the Sportsplex to Bill Smith Electric, Inc., in an amount not to exceed \$44,600. **Motion made (Mitchell/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

6. Resolution authorizing the execution of a subscription agreement with Granicus, LLC, for address identification and rental activity monitoring. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
7. Resolution appropriating funds to support the Safe Harbor Animal Coalition in the amount of \$10,000 for FY2024. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
8. Resolution authorizing the sole source purchase of a Pump from Jim House & Associates, Inc., for the Utilities Department in the amount of \$37,995. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
9. Resolution reappointing Lisa Nix to the Orange Beach City Board of Education. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
10. Resolution authorizing the purchase of Office Furniture for the Finance Department through State Bid from Staples Contract & Commercial LLC in the amount of \$50,495.19. **Motion made (Silvers/Johnson) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
11. Resolution authorizing a franchise for Superior Dumpster Service, LLC, to remove and dispose of commercial solid waste and to remove and transport construction and demolition debris. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
12. Resolution declaring police tactical helmets owned by the City of Orange Beach as surplus and unneeded and authorizing the donation of said property to the City of Creola and the Town of Elberta. **Motion made (Silvers/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
13. Resolution authorizing the execution of a use agreement with the City of Foley for safety barricades for the City of Foley's 2024 Hot Air Balloon Festival. **Motion made (Johnson/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

Public Hearings

1. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0204-PUD-24, Admiral Self Storage PUD. The public hearing was cancelled due to withdrawal by the applicant.
2. Public hearing for an ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case Nos. 0103-PUD-04 and 0704-PUD-04, Reversion of the Bama Bayou Planned Unit Development Master Plan.

Griffin Powell, Planner II, presented the case overview to rescind the PUD (Planned Unit Development) zoning for the Bama Bayou PUD and return the property to the original zoning classification of GB (General Business).

David Skipper, owner of property included in the Bama Bayou PUD, spoke against the reversion of the PUD. Councilmember Silvers confirmed that Mr. Skipper has been in negotiations with the Wharf, the majority property owner of the rest of the PUD, and has refused all offers to purchase his land. Mr. Skipper wants the Wharf to reveal its plans for development of their property so that the value of his portion of land can be better understood.

Mayor Kennon stated that the City is not involved in the civil matter between David Skipper and the Wharf. Jamie Logan, City Attorney, explained that Section 7.08 of the Zoning Ordinance states that if a PUD is not constructed within the specified time period, the Community Development Department is obligated to request the return of zoning to its original classification, and City Council has an obligation to follow through.

Jay Minus, attorney for David Skipper, asked the city to delay reversion of the PUD.

Kris Anderson, attorney for the Wharf, spoke in favor of the reversion of the PUD.

Jay Minus requested again that City Council delay action until a final plan for development is proposed by the Wharf.

Councilmember Mitchell stated that both parties are valued members of the community, and that City Council would be taking the advice of the city's legal counsel to do what is dictated by the ordinance.

There being no further comments, the public hearing was adjourned.

3. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0409-PUDA-24, Cottages at Old Bay/Robinson Grove PUD Minor Modification, Marine Accessory Amendment.

Griffin Powell, Planner II, presented the case overview requesting approval of a minor modification to the Cottages at Old Bay, formerly known as Robinson Grove, PUD (Planned Unit Development) Master Plan to amend the existing pier by adding six finger piers, a lower deck, and a 15' by 20' gazebo with roof.

There being no comments, the public hearing adjourned.

4. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0402-PUDA-24, Zeke's Landing Marina Minor PUD Modification, East Transient Dock Amendment & Storage Building Addition.

Griffin Powell, Planner II, presented the case overview requesting approval of a minor modification to the Zeke's Landing Marina PUD (Planned Unit Development) Master Plan to add finger piers on the previously permitted east transient dock, and to add a 16' by 24' storage building on the south side of the dry boat storage building.

Council clarified and confirmed that this modification will not increase charter boat or rental activity at the marina.

There being no opposition, the public hearing adjourned.

5. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0410-PUDA-24, Young's Hideaway Glamping Sites.

Griffin Powell, Planner II, presented the case overview requesting approval of a minor modification to the Amber Isle and Beach Village PUDs (Planned Unit Developments) to allow glamping sites on the municipal-owned parcels adjacent to the Backcountry Trail and Gulf State Park.

Phillip West, Coastal Resources Director, answered questions from the City Council regarding sever weather plans and to clarify that the concessionaire will begin with ten sites.

There being no opposition, the public hearing adjourned.

Ordinances

1. First Reading – Ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case Nos. 0103-PUD-04 and 0704-PUD-04, Reversion of the Bama Bayou Planned Unit Development Master Plan. Motion made (Johnson/Mitchell) for unanimous consent to suspend the rules to allow for immediate consideration of this ordinance. Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, abstain; Kennon, aye. **Motion passed. (5-0-1).** Motion made (Silvers/Johnson) to adopt the ordinance. Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, abstain; Kennon, aye. **Motion passed. (4-0-1).**

Note: After the meeting was adjourned, the City Attorney determined that an abstention during the vote for unanimous consent cannot be counted in the affirmative; therefore, the following motion to adopt the ordinance is null and void. The ordinance will have to move forward for a second reading during the next Council Meeting to be held on May 7, 2024.

2. First Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0409-PUDA-24, Cottages at Old Bay/Robinson Grove PUD Minor Modification, Marine Accessory Amendment. **Motion made (Silvers/Johnson) for unanimous consent to suspend the rules to allow for immediate consideration of this ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).** **Motion made (Johnson/Silvers) to adopt the ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).**
3. First Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0402-PUDA-24, Zeke's Landing Marina Minor PUD Modification, East Transient Dock Amendment & Storage Building Addition. **Motion made (Silvers/Mitchell) for unanimous consent to suspend the rules to allow for immediate consideration of this ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).** **Motion made (Silvers/Johnson) to adopt the ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).**
4. First Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0410-PUDA-24, Young's Hideaway Glamping Sites. **Motion made (Johnson/Boyd) for unanimous consent to suspend the rules to allow for immediate consideration of this ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).** **Motion made (Silvers/Johnson) to adopt the ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).**

XIII. PUBLIC COMMENTS

None

XIV. ADJOURN

There being no further business to come before the council, motion made (Mitchell/Boyd) to adjourn. Vote unanimous in favor.

Time: 5:58 P.M.

APPROVED this the 21st day of May, 2024.




Renee Eberly
City Clerk



MEMORANDUM

DATE: April 30, 2024

TO: Renee Eberly, City Clerk

FROM: Jamie Logan, City Attorney

RE: Bama Bayou PUD- Council Re-Vote

FACTS:

The Council Agenda dated April 16, 2024 contained the item titled "Ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case Nos. 0103-PUD-04 and 0704-PUD-04, Reversion of the Bama Bayou Planned Unit Development Master Plan". This item was listed first under the Public Hearings section of the Council Agenda and again under the Ordinances section (for its First Reading) of the Council Agenda.

Following the first reading of the ordinance, a motion was made to suspend the rules requiring a second reading and move the item for immediate consideration. Councilman Boyd asked the question whether he had to abstain from the vote for immediate consideration if he would be abstaining from the vote on the merits. I did not have an immediate answer and the Mayor moved on to the vote, advising that abstention was paramount to absence and as such he should abstain from both. Councilman Boyd abstained from the vote to suspend the rules; all other members present voted positively to suspend. Following a motion to consider the ordinance, the Mayor called for a vote; Councilman Boyd abstained; all other members present voted in favor of the ordinance. The Mayor announced the ordinance passed.

In the moments following the vote, I confirmed that a unanimous vote requirement to suspend the rules cannot be achieved with an abstention. Councilman Boyd should have voted in the call to suspend the rules and without his vote, the ordinance could not thereafter be considered at the introductory meeting.

LEGAL ANALYSIS

Per Alabama Code, a vote to suspend rules to allow for immediate consideration of an ordinance permanent in nature requires unanimous consent of the voting members present. Code of Alabama §11-45-2 (1975). An abstention breaks a unanimous count and thus the vote fails. The Supreme Court found in *Cooper v. Valley Head*, that the unanimous consent provision of 11-45-2 is mandatory. 212 Ala. 125, 101 So. 874 (Ala. 1924). Therefore, the April 16, 2024 vote to suspend the rules to allow for immediate consideration as well as the vote adopting the ordinance is void and may not stand.

CONCLUSION

The items on the Council agenda on April 16, 2024 titled "Ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case Nos. 0103-PUD-04 and 0704-PUD-04, Reversion of the Bama Bayou Planned Unit Development Master Plan", must proceed to a second reading and vote on the next scheduled Council meeting on May 7, 2024 as the vote on April 16, 2024 was null and void based upon the absention of Councilman Boyd in the vote to suspend the rules.

This memo should be placed in the Council Minutes for the meeting on April 16, 2024 as well as May 7, 2024.