



City of Miami Springs, Florida

The Miami Springs City Council held a **REGULAR MEETING** in the Council Chambers at City Hall on Monday, June 27, 2011, at 7:00 p.m.

1. Call to Order/Roll Call

The meeting was called to order at 7:02 p.m.

The following were present:

- Mayor Xavier M. Garcia
- Vice Mayor Bob Best
- Councilwoman Jennifer Ator*
- Councilman Dan Espino
- Councilman George V. Lob

*Arrived at 7:03 p.m.

Also Present:

- City Manager James R. Borgmann
- Assistant City Manager Ronald K. Gorland
- City Attorney Jan K. Seiden
- Chief of Police Peter G. Baan
- Comptroller Alicia E. González
- Recreation Director Omar L. Luna
- Aquatics Supervisor Carolina Villaverde
- Elderly Services Director Karen Rosson
- City Clerk Magalí Valls

2. Invocation: Vice Mayor Best offered the invocation.

Salute to the Flag: The audience participated.

3. Awards & Presentations:

3A) Legislative Update by José Fuentes of The Fuentes & Rodriguez Consulting Group

José Fuentes of The Fuentes & Rodriguez Consulting Group presented a report with a synopsis of the legislative session. He explained that their firm played more of a defensive role. The first roll out from the Governor was for retraction of almost \$14MM of the Department of Environmental Protection (DEP) funded projects, including \$250,000 for Miami Springs that was on retraction. The end number that came out of the Governor's budget was \$8MM.

Mr. Fuentes explained that the Department of Community Affairs (DCA) was wiped out with one brief amendment on the floor of the House and their goal is to find out how that affects local governments in the Evaluation and Appraisal Report (EAR) process and development of concurrent issues with water, traffic, etc.

Mr. Fuentes mentioned SB 2100 that requires all public employees to pay 3% of their salary to cover their pension costs; it also increases the retirement age from 62 to 65 and special risk from 55 to 60. This was a result of many local municipalities supporting the position due to the cost of pension and the burden that it has on local governments. The issue will not end here and there are other movements for this session that will move from its current date to a January date. Committee meetings will begin as early as September and their firm will begin working on the City's legislative package sooner.

Mr. Fuentes explained that he would not review the entire package; he would be glad to answer any questions. He said that it is important to consider what is going to be the defensive role that local municipal governments have, specifically Miami Springs, and what they would like to see in the upcoming session with the understanding that the budget is a major issue.

Mr. Fuentes said that many of their partners they work with had received budget cuts. Last week the South Florida Water Management District (SFWMD) had to lay off 300 employees and is eliminating their service center in Miami-Dade that has been very helpful. He said that the firm has a good relationship with the new Director and at some point he would like Mayor Garcia and the City Manager to visit Palm Beach and spend some time with the Director. The SFWMD has been helpful in the past and they are one source of funding.

Mr. Fuentes explained that HB 5401 transfers cyber crime offenses from the Attorney General's Office to the FDLE as another cost savings. During the Florida League of Cities Conference they will address many of the legislative issues that will impact local governments and he would like Council and the Administration to advise him of any issues that could impact the City.

Vice Mayor Best asked about SB 2100 and what it represents in savings.

Mr. Fuentes responded that the dollar amount was in the millions and it is part of an overall plan to reduce the State budget shortfall that could have been as much as \$5.4BB. There were many cost saving measures and the Governor vetoed a number of projects that amounted to over \$1MM in trust fund dollars.

City Manager Borgmann stated that the 3% provision in SB 2100 relates only to the Florida Retirement System (FRS), while some provisions were specific to local government pension plans.

Mr. Fuentes explained that some governments are part of the FRS and some are not. The Administration was looking very cautiously at local governments and the City of Miami became the poster child for pension reform. The House and Senate Committee members are listening to a lot of discussion on the issue. He offered to keep a close watch on the legislative session as it moves forward.

Mayor Garcia thanked Mr. Fuentes for his assistance at the County level and with other departments that do not fall within the purview of his contract.

Evaluation and Appraisal Report

Jim La Rue of La Rue Planning and Management Services, Inc. of Ft. Myers stated that the Evaluation and Appraisal Report (EAR) process has changed significantly. He presented an analysis of the EAR and explained that from now on the only requirement is a letter every seven years to see if the City is in compliance with State law. He referred to the recommended policies on local major issues and said that cities will have more flexibility and there are fewer restrictions for the small scale amendment program.

Mr. La Rue explained that he would move forward immediately under the current process. Council should review the policies and he would come back with a list of requirements for the various planning policies. He stated that the redevelopment effort and economic development policies should be looked at very closely and he will schedule a workshop through the City Manager's office for the expedited review process or plan amendments.

Mr. La Rue added that the five-year capital improvement update can be done by ordinance outside of the Comprehensive Plan review and the only concurrency required in the Comprehensive Plan is the normal water, sewer and solid waste. He explained that there would be a lot more local responsibility.

Mr. La Rue said that if Council chooses not to address certain elements they will not be reviewed and those that are identified from a local standpoint will go through the expedited review process with a few workshops.

3B) Proclamation of Recognition – JR’s Gourmet Burgers

Mayor Garcia stated that the Proclamation of Recognition was prepared upon the recommendation of Councilwoman Ator. He would like Council to notify the City Clerk of any businesses that should be recognized for their accomplishments and this is the first of many to come.

Mayor Garcia presented a Proclamation of Recognition to Jesús De La Torre and his wife Saily of JR’s Gourmet Burgers for his commitment of serving food to the community and for being named the “2011 Best Burgers in Miami” by the New Times.

Mayor Garcia stated that Mr. De La Torre had been in business for less than one year and was recognized for the best burger in Miami. His advertising has been limited to a few ads in the River Cities Gazette and the Miami Herald and 95% in Facebook. He congratulated Mr. De La Torre and his wife Saily for their success.

Mr. De La Torre thanked the Mayor and Council for the award and his entire family, employees and friends for their support.

City Manager Borgmann added that JR’s was also recognized by Channel 10 as number two in South Florida based on a tri-county survey.

3C) Request from the Miami Springs Chamber to Sell Beer and Wine at the Upcoming “Andrews Sisters Tribute” at the Rebeca Sosa Theater

Donna Wood-Beney of 3971 N. W. 65th Avenue requested to be allowed to sell beer and wine at the upcoming “Andrews Sisters Tribute” at the Rebeca Sosa Theater on Saturday July 2nd and Sunday July 3rd. She said that all required paperwork has been processed and the insurance binder is on file with the City.

To answer Councilwoman Ator’s question, Ms. Wood-Beney said that the last event when liquor was served was the Davy Jones’ concert.

Councilman Espino inquired about the entity that is producing the show on behalf of the Chamber of Commerce.

Ms. Wood-Beney clarified that TFFS Productions is producing the show and the Chamber is marketing the event that is a not-for-profit endeavor and the fiscal agent is the Onit Foundation.

Vice Mayor Best commented that there were no problems with the previous requests for the sale of beer and wine at the Community Center.

Councilwoman Ator stated that the Davy Jones concert was a single event in the evening. Her concern is that this is a multi-day event at different times that is more family oriented and the High School Math Club is involved.

Ms. Wood-Beney commented that children participate in the shows and the same ladies will be singing for President Obama and 10,000 veterans next month in San Antonio, Texas. She explained that it is a very professional group and they are hiring a professional bartender.

Councilman Lob moved to approve the sale of beer and wine at the “Andrew Sisters Tribute” at the Rebeca Sosa Theater. Vice Mayor Best seconded the motion which was carried 4-1 on roll call vote with Councilwoman Ator casting the dissenting vote.

Councilwoman Ator requested an informational update in August about the Chamber of Commerce and its plans for the future.

Councilman Espino said that he had also requested information from the Chamber of Commerce based on their request for a donation and was told that there are no constituent members. As the City continues to give their support, he would like to know more about the Chamber and its members.

Ms. Wood-Beney clarified that her e-mail was based on “what if” or what could happen if the Chamber was funded. She outlined many things that could be done and it was only a wish list; she did not directly ask for funding in the amount of \$50,000. She is putting together a list of next year’s programs when the new slate of officers is elected. A meeting will be held tomorrow with a few people who are trying to revive the Chamber that has eighteen members and the change of officers always takes place in June. Many new businesses will become involved and she will bring back a report in August.

4. Open Forum:

Cost Recovery

Nery Owens of 332 Payne Drive said that going into the budget season, she would like to address recovery of costs. She noted that Agenda Item 10B addresses the pool hours of operation and rental costs. The rental only recovers the salaries of the lifeguards and the cashier and does not take into consideration the pool or facility maintenance. She said that many of the fees and charges should also be evaluated in order to determine the full value of services. She emphasized the importance of considering cost recovery during this budget cycle.

5. Approval of Council Minutes:

5A) 06-06-2011 – Special Meeting

Minutes of the June 6, 2011 Special Meeting were approved **as written**.

Vice Mayor Best moved the item. Councilman Espino seconded the motion which was carried 4-0 on roll call vote. Councilman Lob abstained since he was not present at the June 6th meeting.

5B) 06-13-2011 – Regular Meeting

Minutes of the June 13, 2011 Regular Meeting were approved **as written**.

Vice Mayor Best moved the item. Councilman Espino seconded the motion which was carried 5-0 on roll call vote.

6. Reports from Boards & Commissions:

6A) 05-05-2011 – General Employees Retirement System – Minutes

Minutes of the May 5, 2011 General Employees Retirement System meeting were received for information.

Councilman Espino noted that the General Employees and Police and Fire Retirement System minutes indicate that the contributions will go up again this year by a few points and this translates into significant dollars on the City's part.

City Manager James R. Borgmann replied that the City's plans are still doing well in the overall scheme of pension plans throughout the country.

6B) 05-05-2011 – Police and Firefighters Retirement System – Minutes

Minutes of the May 5, 2011 Police and Firefighters Retirement System meeting were received for information without comment.

6C) 05-17-2011 – Education Advisory Board – Minutes

Minutes of the May 17, 2011 Education Advisory Board meeting were received for information.

Councilwoman Ator referred to the Education Advisory Board minutes and the public art education fundraiser. She asked Councilman Lob if he was familiar with the recommendation of the Board.

Councilman Lob responded that the Education Advisory Board had requested Council's consideration of the recommendation for the public art program and hopefully it will be done soon.

Mayor Garcia would like to schedule the item for the first or second meeting in August.

Mayor Garcia asked the City Clerk to remind the Board secretaries to present formal requests to Council for any recommendations.

6D) 06-08-2011 – Golf and Country Club Advisory Board – Minutes

Minutes of the June 8, 2011 Golf and Country Club Advisory Board meeting were received for information without comment.

6E) 06-13-2011 – Board of Appeals – Minutes

Minutes of the June 13, 2011 Board of Appeals meeting were received for information without comment.

6F) 06-16-2011 – Historic Preservation Board – Cancellation Notice

Cancellation Notice of the June 16, 2011 Historic Preservation Board meeting was received for information without comment.

6G) 06-20-2011 – Revitalization and Redevelopment Ad-Hoc Committee – Cancellation Notice

Cancellation Notice of the June 20, 2011 Revitalization and Redevelopment Ad-Hoc Committee meeting was received for information without comment.

6H) 06-23-2011 – Code Review Board – Cancellation Notice

Cancellation Notice of the June 23, 2011 Code Review Board meeting was received for information without comment.

7. **Public Hearings:**

7A) Second Reading – Ordinance No. 1019-2011 - An Ordinance of The City Council of The City Of Miami Springs, Florida Amending Code Of Ordinance Section 113-11, Failure to Make Affidavit, by Enacting a Provision which Requires the Securing of a Business Receipt for Occupying a Designated Business Location in the City; Repealing all Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 6-13-2011 – Advertised: 6-16-2011)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that the ordinance has had no changes since the first reading.

Mayor Garcia opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Councilman Lob moved to adopt Ordinance No. 1019-2011. Councilwoman Ator seconded the motion which was carried 5-0 on roll call vote.

7B) Second Reading – Ordinance No. 1020-2011 – An Ordinance of the City Council of the City of Miami Springs Creating Code of Ordinance Section 93-51, Color Palette Compliance; by Providing for Applicability, Palette Compliance, Procedures for Compliance, and Enforcement; Repealing All ordinances or Parts of Ordinances in Conflict; Directions to Codifiers; Effective Date (First Reading: 6-13-2011 – Advertised: 6-16-2011)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that this is the second reading and public hearing. He added the applicability of the N. W. 36th Street District throughout the ordinance and explained that the paint credit amount would only be applicable to the first 25 applicants.

Mayor Garcia opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Councilman Espino moved to adopt Ordinance No. 1020-2011. Councilwoman Ator seconded the motion which was carried 5-0 on roll call vote.

7C) Second Reading – Ordinance No. 1021-2011 – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 150-028, Architectural and Design Regulations; by Delineating Provisions Allowing Use of Up to Three Paint Colors, Authorizing the Building Department to Make Color “Shading” Decisions, and Requiring Notification of Completion by Owner to City; Repealing All Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 6-13-2011 – Advertised: 6-16-2011)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that because the 36th Street District was added to the prior ordinance, he added the same provisions to Section 3 in this ordinance because Section 2 applies to everything except N. W. 36th Street.

Mayor Garcia opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Vice Mayor Best moved to adopt Ordinance No. 1021-2011. Councilman Lob seconded the motion.

Councilwoman Ator said that when considering the Abraham Tract and the Airport Golf District this ordinance will require an update at that time.

City Attorney Seiden agreed that it is a working model and that it will eventually allow the Architectural Review Board to function more efficiently on a project-by-project basis.

The motion was carried 5-0 on roll call vote.

7D) Second Reading – Ordinance No. 1022-2011 – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 113-04, Business Taxes-Schedule of Fees, by Providing a Five (5%) Percent Increase in the Cost of All City Business Taxes; Repealing All Ordinances or Parts of Ordinances in Conflict; Effective Date (First Reading: 6-13-2011 – Advertised: 6-16-2011)

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that the increases are permitted every two years by Florida Statute, not to exceed 5%; there were no changes to the ordinance since the first reading.

Mayor Garcia opened the public hearing to those persons wishing to speak. There were no speakers, and the public hearing was closed.

Councilman Lob moved to adopt the ordinance. Councilwoman Ator seconded the motion.

Mayor Garcia asked for clarification of the last time there was an increase in the fees for business licenses.

Attorney Seiden said that there were never any increases for several years and the fees are way behind most municipalities in Miami-Dade County. This is probably only the second time the fees have increased in the last twelve years.

Vice Mayor Best said that this is not a good time to increase fees, but he will support the ordinance because the amounts are minuscule.

The motion was carried 5-0 on roll call vote.

8. Consent Agenda:

8A) Recommendation that Council Approve a Purchase to Royal Rent-A-Car, the Lowest Responsible Proposer, in the Amount of \$19,296.00, for the Monthly Rental of Two Vehicles, for a Twelve Month Period, Pursuant to Section 31.11 (E) (2) of the City Code, to be Paid from the Law Enforcement Trust Fund

City Manager Borgmann read the title of the award, noting that it is a recommendation to approve a purchase order.

Councilwoman Ator moved to approve. Councilman Lob seconded the motion, which was carried 5-0 on roll call vote.

(Agenda Item 9B considered at this time)

(Agenda Item 9A was discussed after Agenda Item 10B)

9. Old Business:

9A) Appointments to Advisory Boards by the Mayor and Council Members

Vice Mayor Best (Group I) **re-appointed** Mark Safreed to the Golf and Country Club Advisory Board for a full 2-year term ending on July 31, 2013.

Councilman Espino (Group II) **re-appointed** George Heider to the Golf and Country Club Advisory Board for a full 2-year term ending on July 31, 2013.

(Agenda Item 9B was discussed after Agenda Item 8A)

9B) Historic Tax Credit Proposal – Presentation of Contract by Robert A. Chaves

Robert A. Chaves of 3767 N. W. 53rd Street, Boca Raton, Florida said that the City Attorney contacted him to review a proposal by Brian Wishneff & Associates regarding a structure for the City to recoup a portion of the rehabilitation costs associated with the Curtiss Mansion through the sale of tax credits. He distributed the HTC Structural Diagram that was provided by Erik Wishneff of Brian Wishneff & Associates.

Mr. Chaves explained that the basic structure in order to obtain the credits has some real economic effects potentially on the City besides recouping a portion of the Curtiss Mansion rehabilitation costs. He was asked to determine the tax viability of the structure before proceeding with the process. The structure requires the City to give up, in a tax sense, ownership of the property. It is not a sale of the property, but a long-term lease agreement with a newly formed entity of which Curtiss Mansion, LLC is the Manager and Curtiss Mansion, Inc. would indirectly be the operator or owner of Curtiss Mansion Manager that controls Curtiss Mansion Landlord, Inc.

For tax purposes, a tax exempt entity or city cannot shift tax credits through a lease, according to Mr. Chaves. The tax credits can be sold provided that the property has not been placed in service. A specific provision of the Internal Revenue Code permits the shifting of credits if the purchaser pays for them prior to the property being placed in service, and for tax purposes a 55-year lease is a sale.

Mr. Chaves clarified that the basic purpose of the transaction is not to really sell the property, but to enter into a long term lease in which the tax credits can be shifted to the Curtiss Mansion Landlord, LLC entity. Unfortunately, Curtiss Mansion, Inc. indirectly holds an interest and that causes that entity to be a tax exempt entity and a special election would have to be made to treat Curtiss Mansion Manager, LLC as a taxable entity or it would not be able to pass the credits on to the Curtiss Mansion Master Tenant. In other words, step one is to enter into a 55-year lease that is effectively a sale and step two is entering into a nineteen year lease with Curtiss Mansion Master Tenant, LLC that is the entity that finds an investor to invest in the tax credits effectively and repay the amounts up the chain of the leases. The regulations provide for a nineteen year lease at the second level for purposes of maximizing the amount of the credits that can pass from a landlord tenant or the minimum amount for completely transferring all the tax credits to the Master Tenant entity. A third party investor could buy equity and effectively the City would be reimbursed for a portion of the rehabilitation costs by the federal government.

Mr. Chaves continued to explain that a contract has been proposed and each step has merit in the tax law; there are risks associated with any transaction involving the Internal Revenue Service (IRS), according to Mr. Chaves. The risks to the City should be fairly minimal and the person investing in the credit is the investor; there may be representations and warranties and hopefully the exposure of liability can be limited to only what the City receives in the transaction.

Mr. Chaves stated that he was asked to retain Brian Wishneff & Associates, specifically through Erik Wishneff, to enter into a proposed contract. The most important section that he added was an “out” provision. There are no guarantees to the transaction; presumably there will be tax opinions rendered for the benefit of the investor and the City in the transaction. It may be unpalatable for the City to give up the property under a 55-year lease; the concern could be alleviated by the City taking control of the secondary entity either Curtiss Mansion Landlord, LLC, Curtiss Mansion Manager, LLC or effectively Curtiss Mansion, Inc. This can be accomplished by the City having certain powers to nominate its own board or to have a veto or certain rights relative to the tax exempt entity so the 55-year lease is more bearable in giving up the property.

The reason for the transaction is to basically get the federal government to subsidize some of the rehabilitation costs and give funds back to the City through the chain of leases, according to Mr. Chaves. In order for the investor to accomplish its goals, there is effectively a 5-year period at a minimum that must keep the investor in the structure and the rehabilitation project operating for its purposes. If it collapses within five years, the investor loses his credit and he comes back to the City to request a portion of his investment. This means there are continuing obligations of the City under this arrangement. If there is destruction or damage to the subject property, there is an obligation to repair it and put it back into operation in order to maintain the credit. Effectively, in most transactions, the investor is out of the equation after five years. There are certain call rights where the investor can be taken out of the transaction; the call right is generally the fair market value, which means the City can call back the investor’s interest at a fair market value and if not, the investor puts the interest back based on a formula provision that is not very costly to the City.

Mr. Chaves was advised by Wishneff that 99% of the time the interest is put back because the goal is not to own a piece of the property; the goal is to obtain the tax credits. If the agreement is acceptable to Wishneff & Associates, with the “out” provision, there would be a net benefit to the City of \$500,000 to \$600,000 after paying associated costs.

Vice Mayor Best asked if Mr. Chaves had experience in working with a similar case for a national historic designation.

Mr. Chaves responded that he had not worked on a case of this nature; he is a general tax lawyer, that means he covers the entire IRS Code. He found authority for every step in the structure, although there are no guarantees that the IRS will like what it sees. On the other hand, the federal government has an interest in subsidizing the rehabilitation credits. The ultimate investor will receive the credits, not the City and there are no guarantees that they will get the credit. The credits are only given for certified historical expenditures and some expenses that are incurred may not qualify for the credit. The credit amount may vary based on the amount of actual expenditures, although it is estimated to be \$500,000.

Councilman Espino asked if Mr. Chaves had reviewed any other tax credit projects that Mr. Wishneff had provided.

Mr. Chaves said that many of the projects were quite different and the City is in a unique situation because normally the property is shifted to the investor before the rehabilitation. This project is far along and close to being placed in service. The IRS regulations handle each step of the transaction and give it merit under the tax code. The combining of the steps might have some issue.

Councilman Espino said that the steps, although earlier in the process, have withstood IRS scrutiny.

Mr. Chaves explained that each should withstand IRS scrutiny and even if there was a private letter ruling for another tax payer it would not set precedent because the IRS can “flip flop” with a private letter ruling.

Councilman Espino stated that the investor is putting in the capital and they will cash in the tax credits on their taxes.

Mr. Chaves said that the investor buys at a discounted basis, not dollar for dollar and the federal government is basically subsidizing the credits. He added that if the City owns property and leases it long-term for someone else to develop it there would be no issue. The situation with the Curtiss Mansion is that the rehabilitation expenditures were incurred during the period of City ownership. Step one is the sale and step two is the lease; the City is electing to become a taxable entity.

Councilwoman Ator said that her concern is the 55-year lease that is considered a sale and requires the City to give away the property to another entity.

Mr. Chaves explained that there could be ways to alleviate the City’s economic concerns about the length of the lease by being on the “sellers” side and having controls under the lessee’s side of the 55-year lease through the tax exempt entity.

Councilwoman Ator asked if the structure would hold up or if it would be more difficult to pass muster with the IRS if the City were to create its own board to control the use of the building.

Mr. Chaves explained there would always be a concern when the City is on both sides of a transaction and this was discussed with Wishneff’s counsel. The general consensus is that it is still “doable”. The fact that there is common control adds an issue and there will be greater certainty to the structure once the transaction is complete and each concern should be handled by either himself or Wishneff.

Councilwoman Ator reiterated her concern with a 55-year lease because there is no guarantee as to who will be on the Curtiss Mansion, Inc. Board of Directors in the future. It appears that the City would be giving away 55 years of rights to an entity that could change completely.

Mr. Chaves stated that he shared the same concern and that is why he is proposing that the City have continued involvement in the structure without disturbing the tax consequences or if it does, the transaction will not take place. He has to move forward with Wishneff to get the final structure in place and the lease itself can contain specific provisions for the use of the property.

Councilman Espino explained that the lease can include conditions. There will also be operating documents for each LLC and the City can have control within the operating documents.

Mr. Chaves agreed with Councilman Espino that the operating agreements could be very tight and controls could be added without jeopardizing the transaction. He explained that the 55-year lease must look like a real lease and if there are too many controls it might not be treated as a sale for federal tax purposes.

City Attorney Jan K. Seiden said that the City has to make sure that nothing that is done under the transaction would create any kind of adverse impact upon the County bonds or cause a taxable incident. Mr. Chaves is going to review the grant agreement with the Florida Department of Transportation (FDOT) and County General Obligation bonds to make sure that by doing this transaction it will not cause a problem.

City Manager Borgmann commented that there are early indications that it may be promising on the County side, but there are no certainties.

City Attorney Seiden explained that nothing is positive because the County told the City to get its own legal opinion. He said that if there is any doubt as to the questions raised by Councilwoman Ator, there will have to be serious discussions with CMI as to how the City can be involved in their board or control their actions in regards to the issues. A contemplated sale, by virtue of IRS documentation has ramifications that go beyond the benefits that will flow back. He added that Council is only seated for two years and this transaction would involve 27 Councils.

Vice Mayor Best stated that the Curtiss Mansion was built in 1925, and after a couple of fires damaged the structure, CMI came together with a goal of renovating the building and have been very successful. There is something to say for their accomplishments and if the City is well represented in the transaction and a chance that it will work, he feels it should be attempted and further pursued.

City Attorney Seiden explained that Council received a copy of the proposed agreement and Mr. Chaves would need authorization to move forward. It would be appropriate to make a motion to authorize him to proceed further in the negotiations of the contract.

Vice Mayor Best moved to authorize Mr. Chaves to engage with Brian Wishneff & Associates on the investigation of moving the deal forward. Councilman Espino seconded the motion.

Councilman Espino said that there is a proposed contract to move forward and there is an understanding of the fees, but the amount and how it interplays with all entities is unknown. He said that if the amount is insignificant or if things do not qualify, then the agreement will not go forward.

City Attorney Seiden explained that the amount represented by Wishneff was estimated to be between \$500,000 and \$600,000.

Councilman Espino asked what Council is authorizing Mr. Chaves to do by authorizing him to “engage” and if it means to engage via contract to move forward.

Mr. Chaves clarified that the contract has an ultimate “out” provision for the City that Mr. Wishneff has not yet accepted. The decision would be for him to potentially go to contract with Wishneff without any real significant liability on the City’s part until there are hard numbers and facts.

Councilwoman Ator explained that if there is an “out” provision, it seems that the contract is for moving forward with negotiating with Wishneff in working out the problems and if that is not possible, the City will not go through the process.

Mr. Chaves said that the problem is not with Wishneff or the structure; the problems are internal between the City and CMI because a 55-year lease has a real impact to a property owner. Wishneff’s goal is to bring in an investor and earn his commission and until this is done, he will not get paid; he is looking to maximize the amount of credits and close the deal. The City’s interests are in common with Wishneff and the internal issues are not theirs.

Attorney Seiden clarified that Council would be giving approval for Mr. Chaves to negotiate a tax credit agreement, for final Council approval, with Wishneff to represent the interest of the City receiving historic tax credits. The City will have to deal with the other issues internally and externally.

Councilwoman Ator would like clarification that this is not authorization to sign an agreement with Wishneff and move forward with the process, although it would be nice if the issues can be resolved and there is a better idea of what is needed.

Councilman Espino explained that Council would be giving approval for Mr. Chaves to negotiate with Wishneff and come back in August to get Council approval to begin working on the issues.

City Attorney Seiden said that the issues will be addressed during the interim. Council is being asked to authorize Mr. Chaves to continue to negotiate the agreement and when he has an agreement that he believes is acceptable to him, and acceptable to the City, he will bring it back for final approval. When the agreement comes back, Council will consider the other issues in regard to control and the 55-year lease situation based on the alternatives presented by counsel to resolve them. Council’s agreement to sign the agreement maybe conditional upon final resolution of those issues.

Councilwoman Ator stated that it is not good business to enter into a contract that binds the City for 55 years based on the theory that the City and CMI are friends and they will deal with issues later. The urgency of the issue might motivate the parties to try to come to some resolution based on the legal advice being provided.

Mr. Chaves clarified that they are not entering into any agreement relative to the structure; the only agreement for consideration is a simple agreement with Mr. Wishneff that says the City would like to move forward and maximize the credits and make the deal. At the end of the day, the agreement has an out provision, although it has not been approved by Wishneff, because there are many issues to resolve, especially the bonds. He assured Council that they are not authorizing the signing of a 55-year lease or setting up operating agreements.

Mayor Garcia said that what Mr. Chaves presented is fine with him, especially if there is an out provision. If Council agrees, he would accept a motion to allow Mr. Chaves to move forward if nothing changes.

City Attorney Seiden clarified that Mr. Chaves would bring back the agreement for Council approval and he is only being allowed to continue to negotiate a basic agreement for the transaction.

Councilman Espino commented that there is no 55-year lease and it is giving approval to proceed forward on a matter that is paid on a contingency basis and there is no financial liability. Conditions must be solved afterwards that are called condition subsequent and most large deals have these or they could not proceed forward. He questioned why Mr. Chaves would have to come back for another approval if nothing changes.

Mr. Chaves said as a practical matter it might have to come back. He agrees with Councilman Espino's point about not coming back if there are no changes, but he has never been involved in a transaction when there were no changes. He envisions Mr. Wishneff coming back to say that if the City backs out at closing and he has spent \$50,000 he will want to get paid for his expenses.

Mayor Garcia stated that he would like to know the impact of securing the tax exempt dollars for the Curtiss Mansion.

Mr. Chaves explained that the time constraint is the placing of the Curtiss Mansion in service. Once the facility is used, the ability to sell the credits effectively through the 55-year lease is done. The key concept is the transfer of the property, prior to it being used under the IRS Code, which means before it is placed in service.

City Attorney Seiden stated that the City would have control over placing the building in service because there will be end of project items before issuing a certificate of occupancy. Councilwoman Ator would like some answers before getting involved in the agreement regarding CMI and control over the 55-year lease. If this is a condition preceding in her mind, she is not prepared to go forward.

Mayor Garcia explained that is why he wanted to know how this would affect the other negotiations with the other parts and this is only allowing Mr. Chaves to proceed with the negotiations with Wishneff. The City can still work out the details for the 55-year lease.

City Attorney Seiden reiterated that there is time to deal with the other issues before the agreement comes back for approval.

Jo Ellen Morgan Phillips of 372 De Leon Drive, President of CMI stated that when she was first notified of the tax credit issue, it was almost two years ago and she spoke with Kathleen Kauffman who is the County Director of Historic Preservation. Mr. Ivan Rodriguez ran the department for almost 35 years before Ms. Kauffman and both agree that the tax credit is very legitimate. Approximately 18 months ago, Mr. Wishneff met with the City Manager to discuss whether or not the program would be good for the Mansion and the City. She said that in the meantime CMI has not stopped raising funds by other means and basically they were told that the credit is like free money without any obligation to match funds.

Ms. Morgan Phillips emphasized that CMI raised all the funds through their volunteers and Project Manager Roy Rodriguez has devoted more than \$450,000 of his professional time had he not been on the Board. She said that she just heard all the details about the tax credit program this evening and it sounds complicated but it is not that complicated because the property will still be owned by the City and the City will have control over the additional entities.

Ms. Morgan Phillips explained that the people on the CMI Board like to get things done and move forward; they have accomplished much over the last twelve years. If it is not good for the City she would back off and she is not going to be here in 55 years. The Curtiss Mansion will play into the economic development of the City and they are planning to open the facility on October 9th since that was the day that Glenn Curtiss and his wife moved into the Mansion in 1925. Funding is still needed for the exhibits, landscaping, etc. and they will continue to write grants. The Events Coordinator for the Curtiss Mansion is ready to move forward with weddings and events and this cannot happen until they are issued a certificate of occupancy.

Ms. Morgan Phillips said that CMI is very glad for their accomplishments because they are giving something back to the City and the world. Glenn Curtiss was a man of the world and they are going to honor the nation's unsung heroes who have made America great.

Mayor Garcia stated that although October 9th might be symbolic, it is more important to make sure that the building is not put into service in order to be able to take advantage of the tax credit. He wants to make sure that all issues are addressed before signing an agreement.

Ms. Morgan Phillips stated that the CMI Board is getting new members, including one person that wrote the national landmark designation for the Freedom Tower.

Councilman Lob asked if CMI's timing for the issuance of the certificate of occupancy is flexible in case the City needs time to resolve the issues related to the tax credit.

Ms. Morgan Phillips confirmed that CMI is flexible with the opening date.

Councilwoman Ator explained that her intent is not to delay the opening of the Curtiss Mansion. She had asked for the solutions with the understanding that there are time related issues. She wants the City to do whatever needs to be done over the next 30-45 days to have resolution and move forward.

Ms. Morgan Phillips urged Council to begin the process and determine if it is good for the City.

Councilwoman Ator asked if the agreement does not work out if it would leave the City with any liability.

Mr. Chaves said that there are non-business issues to some extent that do not pertain specifically to obtaining the tax credit. He said that the City might have issues with control or with the County on the bond offering and there must be an ability to opt out.

Vice Mayor Best **withdrew** his motion that was on the floor.

City Attorney Jan K. Seiden explained that it would be appropriate for a motion to authorize Counsel to continue his negotiations with Wishneff & Associates in regard to the proposed contract that was presented this evening; if there are no further changes to be made it would not need to come back to Council and management would be authorized to sign it; if there are changes, it must come back to Council and at the same time the other issues will be dealt with by City Administrative Staff and others to investigate the bonding matters and the control matters regarding the 55-year lease.

Vice Mayor Best stated that he would move the item, with the condition that there is a timeline for Mr. Chaves to respond on the results of the negotiations with Wishneff at the first meeting in August.

Mr. Chaves said that Mr. Wishneff had been very cooperative for obvious reasons and he will move quickly to respond.

Vice Mayor Best moved to approve as stated by the City Attorney. Councilman Espino seconded the motion, which was carried 5-0 on roll call vote.

9C) Approval of Expenditure for Curtiss Mansion Federal Tax Credit Certification RJHA Project No. 06-3277 (Tabled: 6-13-2011)

City Manager Borgmann stated that this is a proposal from Heisenbottle Architects in the amount of \$10,500. Heisenbottle Architects have been working on the Curtiss Mansion project since its inception and they are offering to do the work needed to provide information to the appropriate parties.

CMI President Jo Ellen Morgan-Phillips commented that the original amount of the proposal from Heisenbottle Architects was more than \$10,500.

Councilman Espino moved to approve the expenditure of \$10,500 to R.J. Heisenbottle & Associates so that they can begin the work on qualifying the expenditures for historic certification. Vice Mayor Best seconded the motion.

Ivan Rodriguez of Heisenbottle Architects stated that they had worked with Brian Wishneff & Associates on other projects and they coordinate with the firm in order to make sure that what they are presenting to the State Historic Preservation Office and the National Park Service is in keeping with the legality of what the tax attorney will then be presenting for the tax credit application. It is a collaborative process with the offices of the attorney and the architect.

Councilman Espino said that the qualifying expenditures of the project are identified based on the criteria provided by the State and Federal government and that is what is submitted as part of the package to get the tax credit.

Mr. Rodriguez explained that landscape and furnishings do not qualify; it is only for construction related and design expenditures. The architect's role is to prepare the application that will state that they have done everything by the book, according to the Secretary of the Interior standards for rehabilitation. The point is to be able to certify that architecturally the work that was done is approved at the state and federal level.

Councilwoman Ator stated that the City would not need the services of Heisenbottle Architects if they do not make an agreement with Wishneff and she would wait until there is assurance of an agreement.

Mr. Rodriguez explained that there is a time factor involved and this is a lengthy, complicated process that involves Staff review at the state and federal level.

Mayor Garcia asked about Councilwoman Ator's suggestion to wait until there is assurance of an agreement and if this was an issue with Mr. Rodriguez.

City Attorney Seiden explained that the process will take between six to eight weeks at the state level and hopefully Mr. Chaves will come back with an agreement. The issues that need resolution are whether or not an agreement can be negotiated with Wishneff & Associates and the City must resolve the control issues for the 55-year lease and the clearance on the bond implications. He stated that Council would be making an investment for an investment and if they decide to wait that would be the conservative way to proceed or they could decide to invest \$10,000 to get the project going.

Vice Mayor Best said that his second to the motion stands to approve the expenditure of \$10,500.

The motion was carried 4-1 on roll call vote with Councilwoman Ator casting the dissenting vote.

To answer Councilwoman Ator's question, City Manager Borgmann said that this is an allowable expense against the entire project. He explained that the net to the City from the tax credit is estimated to be \$500,000 or \$600,000 after expenses. The \$10,500 expense would come from the undesignated fund balance and will be recaptured by the sale of the tax credits.

(Agenda Item 9D was discussed after Agenda Item 9A)

9D) Status Report Regarding City Hall Elevator

City Manager Borgmann stated that the original proposal for the new elevator included additional items for electrical and HVAC work as required by code and the City was able to cover the cost of both in the amount of \$6,600.00 by using the City's own contracted electrician therefore saving \$9,156.00 off the original cost from the elevator company.

City Manager Borgmann explained that the Administration checked to make sure there was not a problem in regard to the warranties and the elevator provider agreed that it would not be a problem.

As far as the actual schedule for the elevator repair, the electrical upgrades are being done and there will be issues once the elevator is shut down, according to Mr. Borgmann, since all the August meetings will have to be held at the Community Center.

9E) Strategic Planning Update

City Manager Borgmann stated that Council asked the Department Heads to contact the various advisory boards that they report through in order to get their input to develop a survey that would go to the residents. Since some boards do not have a particular department liaison such as Architectural Review, Education, and Historic Preservation, he and the Assistant City Manager would take the lead for those boards. The City Planner was responsible for the Zoning and Planning/Board of Adjustment and the Revitalization and Redevelopment Ad-Hoc Committee and he and the Assistant City Manager may be the contacts for those boards.

City Manager Borgmann spoke with the Chairman of the Zoning and Planning Board/Board of Adjustment and he offered some great ideas that are already being considered. The Administration compiled a list of companies that handle strategic planning retreats and they will be contacted.

City Manager Borgmann referred to Bill Busutil who works for the Miami-Dade County Office of Strategic Business Management that was associated with a company that did strategic planning studies and was involved with the Miami Lakes and Cutler Bay studies.

There are many concepts and ideas based on wish lists, while some are based on the future needs of a department or particular activity for the City; normally these are identified in the budget, according to Mr. Borgmann. He explained that prioritizing is critical once a plan is developed and the Golf Course is an example because everything hinged on the installation of the new irrigation system and now that it is complete, other golf course projects can move forward.

Councilman Espino stated that Council had discussed a timeline with the anticipation that the survey would go out in August and he would like confirmation as to when the list of goals and challenges for each department and a list of five or six questions for the survey would be ready.

City Manager Borgmann responded that there was a 30-day challenge that the Administration is working toward and that would be after July 4th.

10. New Business:

(Agenda Item 10A was discussed after Agenda Item 9C)

10A) Approval of Food Service Subcontract Extension with Greater Miami Caterers, Inc.

City Attorney Seiden pointed out that the increase in the unit cost, as outlined in the memorandum from Elderly Services Director Karen Rosson, does not add up. He noted that the increase seems to be \$0.41 instead of \$0.11.

Elderly Services Director Karen Rosson clarified that the entire cost increased 3.1% based on the acceptable consumer price index for the 9th month, commencing the beginning of the contract. She said that the unit costs that are listed in her recommendation are accurate, although the percentage of increase may be incorrect. She is recommending that Council award a contract for one additional year, which is allowable by law.

To answer Councilwoman Ator's question, Ms. Rosson explained that the City is reimbursed through the contract with the Older American's Act and the State of Florida Local Alliance for Aging. This past calendar year, the award was \$72,752 to cover the cost of the congregate meal portion. Any difference would result in a request for Council to approve additional funding. In addition to the \$72,000, there is \$21,000 that was reinstated by the legislature for NSIP funds or cash in lieu of commodity funds. The combination of the two funding sources provides the opportunity to pay for the congregate meals.

To this point, \$37,414.00 has been spent of the \$72,000, which is on target for the year, according to Ms. Rosson. The congregate meals are separate from the home delivered meals. There is \$50,000 granted for home delivered meals on weekdays; Council approved funding for weekends and there is no grant subsidy for this service. To date, \$1,654.00 has been spent in the weekend home delivered meal category or 27 meals per weekend at a unit cost of \$3.27.

Councilwoman Ator asked if the grant monies are anticipated to continue in the future.

Ms. Rosson explained there is no way to tell if funding will continue; either way a contract must be in place to provide the meals.

Vice Mayor Best moved to approve. Councilman Espino seconded the motion, which was carried 5-0 on roll call vote.

(Agenda Item 10B was discussed after Agenda Item 10G)

10B) Report on Pool: Extended Hours and Rentals

Change Order

City Manager Borgmann presented a subsequent item for Council approval that he was just notified of today regarding an updated Miami-Dade County School policy and specifications for approved sports fencing at Stafford Park. The Administration is requesting approval of a change order to the original purchase order in the amount of \$3,918.75 in order to complete the project.

Parks and Recreation Director Omar Luna clarified that he found out this afternoon that the School Board is requesting stronger gauge fence posts and railings that involve a change order to the original purchase order. He would like to expedite approval instead of waiting another month in order to be able to finish the project.

City Manager Borgmann explained that Council approval is required because it is a change to an existing purchase order that is more than \$10,000. He said that the County had changed their method of operation because there was a six-month delay on approval from the School Board and many follow-up calls.

Councilwoman Ator asked about the relationship between the City and the School Board in regard to the lease and use of Stafford Park.

City Manager Borgmann clarified that the schools use Stafford Park on occasions for various sports teams. The education compact with the School Board also allows the schools to use the field with proper notification.

Mr. Luna explained that the agreement with Miami-Dade County Public Schools allows the schools to use the park upon notification and their use is very minimal.

City Manager Borgmann explained that the 25-year original lease for Stafford Park was renewed for an additional ten years and there is five or seven years left.

Councilman Lob moved to approve the change order in the amount of \$3,918.75 to complete the project. Vice Mayor Best seconded the motion, which carried 5-0 on roll call vote.

Parks and Recreation Director Omar Luna said that the Aquatics Supervisor would provide a report on the extended pool hours from 5:00 to 7:00 p.m. that is being done as a test for a couple of weeks. There are some residents and non-residents that are requesting to rent the pool in the summer time and are hesitant because the extended pool hours would affect the rental time. A cost analysis was prepared based on the attendance with the extended hours. He emphasized that marketing is limited and now the rental income is limited as people are hesitant to rent the pool.

Mayor Garcia explained that he asked for the agenda item upon learning of the extended hours. His concern is that the rental requests were from residents for four hours of use and he wanted to know how many use the pool from 5:00 to 7:00 p.m.

Councilwoman Ator had a discussion with the Administration in regard to the change of hours for the pool. She understands that there is not a lot of traffic from 5-7 p.m. and asked for clarification of the report that only one adult and three children came in between that time on May 28th.

Mr. Luna clarified that one adult and three children came in between 5:00 and 7:00 p.m., but there were other people already there.

Councilwoman Ator stated that the income is not based upon those people that enter the pool between 5:00 and 7:00 p.m. She said that in the past she would not bring her kids to the pool at 4:00 p.m. knowing that it closed at 5:00 p.m. In her opinion, the numbers presented are not a good reflection of the actual use of the pool related to the extended hours. She asked if most of the rentals during the summer are on the weekends or on Sundays from 5:00 to 9:00 p.m.

Mr. Luna explained that last year all rentals were handled on Sunday and a policy was implemented to rent the upstairs for a party with a choice to use only one side of the pool. This allows a safety issue for younger children who should only use the shallow end.

Mayor Garcia said that many of the pool rentals are for parties that are planned in advance and the public can be notified that a party is going on. His concern was related to the liability and having to share the pool with the public. He does not understand why the public cannot be told that the pool is closed because it is being rented from 5:00 to 9:00 p.m. and if there is no rental it can remain open from 5:00 to 7:00 p.m. This would bring revenue to the City with the proper marketing of the pool.

Mayor Garcia said that many people are not aware of the swimming lessons and this is why he brought this to Council's attention. He wants to generate revenue and understands that the fees should be adjusted for the pool rental in order to cover the operating costs. With the proper marketing the pool can be a valuable asset and generate revenue to pay for the operating costs.

To answer Councilwoman Ator's question, Aquatics Supervisor Carolina Villaverde stated that the public rental fee is \$50.00 and a fee of \$4.00 per adult and \$2.00 per child is paid for everyone that enters the facility. The total fee varies on how many adults and children attend. The private rental is \$60.00 per hour for fifty people and it increases to \$80.00 per hour for more than 62 people.

Councilwoman Ator stated that she would agree with the Mayor's analysis. The private rental is too inexpensive and people are flexible enough to understand when a private party is booked.

Mayor Garcia said that he would like to generate more revenue from rentals without inconveniencing the residents. He knows that the pool is rented to private organizations like Miami-Dade Aquatics and other schools for swimming and polo teams. He requested information showing the rates that are charged the organizations and how much revenue has been generated from the various teams. Mayor Garcia explained that he would like the pool operation to be treated like the Community Center and the Golf Course in an effort to generate revenue.

To answer Councilwoman Ator's question, Ms. Villaverde clarified that the pool facility is only rented on Saturday and Sunday because it is used by swim teams and for lesson make-ups on Friday nights if they are rained out in the afternoon.

Councilman Lob felt that \$240.00 is very inexpensive for the pool rental for four hours because hall rentals start at \$400.00.

Mayor Garcia asked the Administration to prepare a report for August as part of the budget process. He also would like to know what other cities are charging for their pool rentals. He requested a complete list of groups and organizations that use the pool, including those that use it at no charge.

City Manager Borgmann added that the City has a reciprocal arrangement with the City of Hialeah for use of the pool facilities if either pool is shut down for repairs.

Mayor Garcia explained that he would also like to know about those arrangements as well.

Councilwoman Ator asked about the RecTrac system.

Mr. Luna responded that they are preparing and scanning identification cards and tracking attendance with RecTrac, but have not gone live financially.

Ms. Villaverde stated that all information is input into RecTrac and once she has a printer all the information will be printed out and they are ready to go live financially when the Community Center does.

Councilwoman Ator added that Council wanted to be able to track the people who use the facility, the memberships and the time of day, etc. for marketing purposes. She noticed that people were entering the pool without checking in and wondered how they are keeping track.

Ms. Villaverde pointed out that people were entering for swimming lessons and either herself or the head lifeguard will take a count of those taking lessons and that information is put into RecTrac. The pool is open from 11:00 a.m. to 1:00 p.m. for lap swimming and the morning use is limited to swimming lessons.

Mr. Luna confirmed that the financial component must be implemented before RecTrac can move on to the next step. They are still issuing hand written receipts and the information on the registration forms are entered into the RecTrac system. Most of the pool memberships are already entered into the system.

Councilman Espino suggested that the RecTrac information could be submitted in a memorandum and if Council has any questions they can contact Mr. Luna.

Mayor Garcia agreed that he would also like to have the information that was requested by Councilwoman Ator in a memorandum.

(Agenda Item 10C was discussed after Agenda Item 9E)

10C) Ordinance No. 1023-2011 – First Reading – An Ordinance of the City Council of the City of Miami Springs Amending Code of Ordinance Section 31-11, Purchasing, Procurement and Sale Procedures; by Adding Thereto a Provision to Permit City “Piggybacking” Purchasing from Private Sector Cooperative Purchasing and Not-for Profit Companies; Repealing all Ordinances of Parts of Ordinances in Conflict; Effective Date

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that this is the first reading of the ordinance. At the last meeting, Procurement Specialist Tammy Romero presented a comprehensive memorandum and after reviewing the purchasing ordinance he found two locations where the new language would be added if the City were authorized to take advantage of the private sector cooperative purchasing companies and not-for-profit companies and organizations. The goal is to more efficiently and cost effectively go after the lowest prices as another method of purchasing. It lowers the cost of the products as well as the cost of staff time.

Vice Mayor Best moved to approve ordinance No. 1023-2011 on first reading. Councilman Lob seconded the motion, which was carried 5-0 on roll call vote.

(Mayor Garcia called for a five- minute recess)

10D) Ordinance No. 1024-2011 – First Reading – An Ordinance of the City Council of the City of Miami Springs Repealing Chapter 33, Conflict of Interest; Code of Ethics; Lobbying of the Code of Ordinances of the City of Miami Springs, Containing Code Sections 33-01 Through 33-20; Enacting New Chapter 33, Conflict of Interest and Code of Ethics; Enacting Code of Ordinance Section 33-01, Adoption of Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County; Repealing all Ordinances or Parts of Ordinances in Conflict; Directions to Codifiers; Effective Dates

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that there are a number of stricken provisions and the language on the last page in Section (A) says that by and through the enactment of this ordinance, the City of Miami Springs hereby adopts the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, designated as Miami-Dade County Ordinance Section 2-11.1 and all future amendments thereto for applicability within the City. Section (B) states that for the purposes of this ordinance, all references contained in the adopted Miami-Dade County Ordinance to the county, its Ordinances, procedures, personnel and other related matters, are hereby declared to be intended and interpreted to refer to the City of Miami Springs, its Ordinances, procedures, personnel and other related matters, as may be applicable and necessary to accomplish the purpose of this Ordinance.

Councilwoman Ator asked about the language that was stricken through and if that would remove that language from the Code.

City Attorney Seiden responded that it is standard ordinance procedure to recreate the current language and strike through it.

Vice Mayor Best moved to approve Ordinance No. 1024-2011 on first reading. Councilwoman Ator seconded the motion, which was carried 5-0 on roll call vote.

10E) Ordinance No. 1025-2011 – First Reading – An Ordinance of the City Council of the City of Miami Springs Repealing Code of Ordinance Section 150-005, Alcoholic Beverages; by Repealing the Current Ordinance Provisions and Enacting New Code of Ordinance Section 150-005, Authorization for Endorsement of Applications for State of Florida Alcoholic Beverage Licenses; Repealing all Ordinances or Parts of Ordinances in Conflict; Directions to Codifiers; Effective Date

City Attorney Jan K. Seiden read the ordinance by title.

Attorney Seiden stated that this is the first reading of the proposed ordinance. As discussed previously, this may be radical, but the reality is that there is no location in the City of Miami Springs that could serve alcoholic beverages or obtain a license without a variance.

Attorney Seiden said that most of the provisions are distance related and the outdated provisions are related to the distance to residential districts, churches and schools. In substitution for all distance requirements, he is proposing to allow the Administration to deal with the requirements of the State of Florida to give zoning approval on an application for anyone applying for an alcoholic beverage license.

City Attorney Seiden explained that the intent of the ordinance is to authorize the City Manager, or designee of the City, to provide the required zoning approval endorsement on applications for the issuance of any State of Florida alcoholic beverage licenses for business establishments in the commercial districts of the City.

City Attorney Seiden stated that zoning approval endorsement by the City Manager or designee of the City shall be specifically conditioned upon the agreement of each license holder that at least 51% of all revenues received by the licensed establishment shall be from the sale of food and food products. The aforesaid agreement shall be memorialized in a Covenant Running with the Land which shall be recorded in the public records of Miami-Dade County contemporaneously with the City's endorsement of the application for the alcoholic beverage license.

The execution and the recording of Covenant Running with the Land shall not be required for applicants for alcoholic beverage license for the following uses:

1. Supermarkets or other retail food sale establishments.
2. Convenience stores; stand alone or in conjunction with a gas/service station.
3. Restaurants operating under an SRX State of Florida Alcoholic Beverage License.
4. Package stores; where permitted by District Boundary Regulations.
5. Bars; where permitted by District Boundary Regulations.
6. Entertainment establishments and private clubs; where permitted by District Boundary Regulations.

City Attorney Seiden explained that all applicants seeking zoning approval endorsement must send a sworn letter of intent/explanation of the business venture to the City Manager's office and the City Manager designee shall review and either approve or disapprove within ten business days.

By enactment of the ordinance this will eliminate all prior distance restrictions and limitations previously utilized by the City to withhold or condition the City's endorsement of zoning applications, according to Attorney Seiden.

Councilwoman Ator was concerned about protecting the community because currently 51% of the revenue must be derived from the sale of food in order to have an alcoholic beverage license.

City Attorney Seiden said that bars can serve food but the primary service obligation is serving beverages, not food.

Councilwoman Ator referred to the change in the smoking law and the food sale requirements. She said that bars/restaurants in Miami Springs were not complying with the non-smoking ban.

Mayor Garcia explained that certain uses are allowed within certain districts.

City Attorney Seiden said that there are certain uses that cannot be prohibited like adult related businesses in the Abraham Tract. There is no regulation that says the City must allow a bar; the use can be removed from the district boundary regulations and it cannot be allowed as a secondary use in some of the 36th Street buildings. A hotel might want a private club or entertainment facility and a bar to make it more attractive to generate business and those are the instances being considered; no one wants a stand-alone bar.

Councilman Espino thanked the City Attorney for drafting the ordinance, which is exactly what is needed to promote business. He explained that someone wanting a beer and wine license would be able to obtain approval the same day as opposed to waiting 30-days for a Board of Adjustment meeting.

Councilman Espino moved to approve Ordinance No. 1025-2011 on first reading. Vice Mayor Best seconded the motion, which was carried 5-0 on roll call vote.

10F) Appointment of Voting Delegate to the Florida League of Cities 85th Annual Conference

Mayor Garcia asked if anyone wanted to make a recommendation for the voting delegate.

Councilman Lob moved to appoint Vice Mayor Best.

Vice Mayor Best stated that he had been the voting delegate for the past six years and he would like to move to approve Councilman Espino since he has indicated an interest and traveled to many of the conventions.

Vice Mayor Best moved to appoint Councilman Espino. Councilman Lob seconded the motion, which was carried 5-0 on roll call vote.

City Clerk Magali Valls asked Council to let her know if they would be attending the conference so that she could make their reservations.

(Agenda Item 10G was discussed after Agenda Item 10A)

10G) Consideration of Rating System for Productions in the Sosa Theater

Pelican Playhouse Artistic Director Ralph Wakefield and Chairman of the Board and Theater Manager Nancy Jones, of 255 Springs Avenue, were present to speak on the item.

City Manager Borgmann stated that Mr. Wakefield submitted a document referencing the current standard guide for movie entertainment nationally and a recent letter expressing his concern about language in a production that is tentatively scheduled for later this year, although it has since been cancelled by the production company.

City Manager Borgmann explained that the purpose of this agenda item is to allow the screening of future productions that might be on the horizon and for Council to adopt the rating chart with guidance to the Administration on what is the most adult level they will consider. A survey will be conducted of other cities that have theatres to ascertain what restrictions they might have.

Mayor Garcia thanked Mr. Wakefield for reviewing the language content of the proposed play. He asked if this falls under the purview of his contract for the Pelican Playhouse.

Mr. Wakefield explained that the responsibility falls upon him as the Theatre Manager.

Ms. Jones added that Ralph Wakefield spoke with the Coral Springs Institute for the Performing Arts and they responded that they only approve of family oriented productions. She explained that they reviewed the movie ratings and “G” rated movies are films that contain no strong language, nudity, sex or drug usage and violence is minimal.

Mr. Wakefield stated that a “G” rating is for General Audience and it includes a wide variety of productions; anything above “G” or “PG” allows some violence, profanity, brief nudity and no drug use.

Ms. Jones stated that the Pelican Playhouse board met to go over the ratings and all agreed that they are a family oriented, children’s theatre program so they approve of the “G” rating. Other visiting companies might want to perform something beyond “G” and that is why they are recommending a standard that can be included on the application to show what the theatre will allow.

City Manager Borgmann explained that one caveat was brought to his attention, although the validity is unknown at this time. The majority of the Community Center construction was paid for with County funds and there could be guidelines on what they allow.

Councilwoman Ator said that her concern with the rating system is that what is seen in a movie theatre is different from what is seen in a live production.

Vice Mayor Best explained that in motion pictures the audience sees what the movie director wants them to see, while the audience is the judge of what they see in a theatrical stage play. He thanked Ralph and Nancy for bringing this matter to Council’s attention.

Councilman Lob stated that the use of the theatre is regulated by the City’s use of public funds for its construction. He does not have an issue with limiting the productions to a “G” rating, but would like to find out if the City is allowed to do this based on the County’s regulations.

Councilwoman Ator suggested adopting a “G” rating unless it is determined that this is not allowed by the County.

Ms. Jones stated that they would be happy to check with the County to find out if there are any restrictions on ratings and in the meantime Council could make a decision to limit productions to a “G” rating until they come back with a report in August.

City Attorney Seiden explained that Council would be establishing a community standard for Miami Springs and just because the County funded a portion of the construction does not mean they have the right to set community standards.

Mayor Garcia suggested that Council could consider exceptions for any productions that might fall into the “PG” rating.

City Attorney Seiden explained that Council could set a standard for “G” rated productions, with a proviso in the motion that they would consider exceptions on a case-by-case basis.

Councilwoman Ator moved to accept the recommendation of the Pelican Playhouse to institute the “G” rating conditional upon the County’s requirements, with exceptions approved by Council on a case-by-case basis. Councilman Lob seconded the motion, which was carried 5-0 on roll call vote.

11. Other Business:

11A) Mid-year Evaluation of City Manager (Requested by Councilman Espino)

Councilman Espino stated that this situation involves the City’s finances and ways to lessen expenditures. This is a particular situation that has significant financial ramifications.

Councilman Espino said that in a continued effort to be fiscally responsible for City funds, the Mayor and Council should consider accepting the City Manager’s resignation immediately and appoint Ronald K. Gorland as Interim City Manager saving upwards of \$140,000.00. Should the Manager give his resignation, and be willing to do so now, it would save six months compensation/expenses totaling \$99,834.96. His memo outlines expenses for the year, salaries, car allowance, pension contributions and miscellaneous benefits such as insurance, workers compensation, payroll taxes, and a cell phone, totaling almost \$200,000 and monthly expenses of \$16,639.00.

Councilman Espino explained that there is also an opportunity to save on the Assistant City Manager’s compensation presuming that the new City Manager will not begin to work officially with the City until January 1, 2012. The Assistant City Manager, working as the Interim City Manager, could save the City three months of his salary in the amount of almost \$40,000. He also outlined the Assistant City Manager’s yearly expenses and compensation totaling \$158,000.

Councilman Espino said that the recent budget presumptions show that the City must resolve approximately \$537,000 in a proposed budget deficit; \$120,000 of which is a payout to the City Manager for accrued sick and vacation leave. He said that the City must identify all possible savings and it is not appropriate for someone who wants to retire at a certain time to do so at the cost to the residents. He said that if the resignation is not forthcoming or if January 1st is a hard and fast date, earlier termination with the payout in the severance clause in the contract would still save a dramatic amount of money.

Councilman Espino explained that the City Manager's contract provides for a severance payout of three or four months of base salary, which is \$12,259.33 per month and this would be a little more than \$36,000 for three months and just under \$50,000 for four months. Having one administrator would be \$88,584 up to \$102,606, which is significant considering the \$120,000 payout. He asked Council to move forward with his recommendation and to appoint Assistant City Manager Gorland as Interim City Manager while the search for a new City Manager continues. He said that Mr. Gorland would be welcome to apply.

Vice Mayor Best said that he is not in favor of Councilman Espino's proposal, except for having Ron Gorland as City Manager. He is not sure that Councilman Espino has the correct numbers and would like to review the figures. The City Manager has a contract and monies will have to be paid in regard to severance. He said that having the City Manager and his knowledge during the budget process will be more of an asset to the City than the meager savings.

Mayor Garcia said that he contacted the Finance Department to obtain the numbers based on the estimate of saving \$140,000.

Councilman Espino explained that the figures noted with an asterisk were based on what was allocated in the budget and there is only a question in regard to some of the numbers.

Mayor Garcia explained that he would like to wait for the Finance Director to confirm the figures and get all the details and facts from the Human Resources Director and City Attorney. He agrees that \$140,000 is a tempting number but there must be confirmation of the numbers.

Council agreed to table the item until the August 8, 2011 Regular Meeting.

12. Reports & Recommendations:

12A) City Attorney

None.

12B) City Manager

Fourth of July

City Manager Borgmann reminded everyone of the Fourth of July activities for the upcoming weekend beginning with a free Car Show at the Circle on Sunday, July 3rd from 6:00 to 10:00 p.m. followed by the parade at 10:00 a.m. on Monday, July 4th starting at the Community Center and moving toward the Golf Course. The fireworks will commence at approximately 9:00 p.m. that evening.

City Manager Borgmann announced that Bob Calvert stepped up and was able to get County approval for a fire truck for the parade that will spray water in permitted areas.

Code Compliance Officers

City Manager Borgmann announced that two part-time Code Compliance Officers started work today. The Office Administrative Assistant began work last week and everyone seems to be very happy with her.

Parade Grand Marshal

City Manager Borgmann took the liberty of appointing Jo Ellen Morgan-Phillips and CMI collectively (based on last year's recommendation from Mayor Bain) as the Grand Marshal for all the work they have done to restore the Curtiss Mansion.

12C) City Council

Recess

Vice Mayor Bob Best wished everyone a safe recess in July.

Fourth of July

Councilman Espino looks forward to the Fourth of July activities. He hopes that everyone has a great summer.

Fourth of July

Councilman Lob hopes that everyone has a wonderful and safe Fourth of July.

Good Luck

Councilwoman Ator wished Mayor Garcia the best of luck on his trip and his convalescence.

Dot Miller

Councilwoman Ator recognized former resident Dot Miller who recently moved to Plantation and died a few days ago. She was very involved in the community and the Daughters of the American Revolution. The services will be held on Thursday, June 30th at the Presbyterian Church from 6:00 to 8:00 p.m. followed by the funeral on Friday, July 1st at 11:00 a.m.

Check

Mayor Garcia presented a check from the Florida League of Cities to the City Manager for the delinquent occupational licenses in the amount of \$2,596.13.

Fourth of July

Mayor Garcia is looking forward to the Fourth of July parade. There are new rules about the dispensing of water along the parade route since there had been complaints in the past.

City Manager Borgmann announced that police will patrol the parade route and advise the participants that no water will be sprayed onto the participants. He clarified that no inflatable pools of water will be allowed in pick-up trucks in the parade.

Rotary Club

Mayor Garcia spoke to the Rotary Club last week and was able to answer many questions. He urged more people to participate in the meetings since the Club provides a wonderful service to the community.

King and Queen Coronation

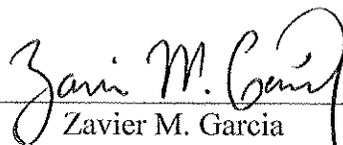
Mayor Garcia announced that he will crown the King and Queen at the Senior Center on Thursday, June 30th and they will be sitting on the Fourth of July parade float.

Election Day

Mayor Garcia reminded everyone that Election Day is Tuesday, June 28th to elect the next Mayor of Miami-Dade County. He urged everyone to vote from 7:00 a.m. to 7:00 p.m. The precincts that normally vote at the Community Center will vote at the Golf Course.

13. Adjourn.

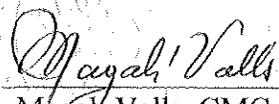
There being no further business to be discussed the meeting was adjourned at 10:59 p.m.



Zavier M. Garcia
Mayor



ATTEST:



Magali Valls, CMC
City Clerk

Approved as written during meeting of: 8-8-2011.

Transcription assistance provided by Suzanne S. Hitaffer.