

City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Meeting Agenda - Final-Revised

August 1, 2019

1:00 PM

City Hall Auditorium

City Commission

Mayor Lauren Poe (At Large)
Commissioner Helen Warren (At Large)
Commissioner Gail Johnson (At Large)
Commissioner Gigi Simmons (District 1)
Mayor-Commissioner Pro Tem Harvey Ward (District 2)
Commissioner David Arreola (District 3)
Commissioner Adrian Hayes-Santos (District 4)

If you have a disability and need an accommodation in order to participate in this meeting, please contact the Office of Equal Opportunity at (352)334-5051 at least two business days in advance. TTY (Text Telephone Telecommunication Device) users please call 711 (Florida Relay Service). For Speech to Speech (STS) relay, please call 1-877-955-5334. For STS Spanish relay, please call 1-877-955-8773. For STS French Creole relay, please call 1-877-955-8707.

1:00pm - CALL TO ORDER - Afternoon Session**AGENDA STATEMENT**

"Citizens are encouraged to participate in City of Gainesville meetings. In general, speakers will be limited to 3 (three) minutes per agenda item. Additional time may be granted by the Mayor or by the City Commission as directed. The City of Gainesville encourages civility in public discourse and requests that speakers limit their comments to specific motions and direct their comments to the Chair. Signs or Props are not permitted in the meeting room. Citizens are encouraged to provide comments in writing to the Clerk of the Commission before meetings and/or during meetings for inclusion into the public record. Citizens may also provide input to individual commissioners via office visits, phone calls, letters and e-Mail, that will become public record. In some instances, i.e., Quasi-Judicial Hearings, these particular contacts may be prohibited."

ROLL CALL**INVOCATION****PROPHET GEORGE YOUNG****ADOPTION OF CONSENT ITEMS - GRU, General Government, Audit & Finance Committee and General Policy Committee Items**[190185.](#)**City Commission Minutes (B)**

RECOMMENDATION *The City Commission approve the minutes of July 18, (2) and July 22, 2019.*

[190185 July 18 Minutes 20190801.pdf](#)

[190195A July 18 Minutes 20190801.pdf](#)

[190195B July 22 Minutes 20190801.pdf](#)

[190176.](#)**Resignation of Ashley Rella from the City Beautification Board (B)**

RECOMMENDATION *The City Commission accepts the resignation of Ashley Rella, effective immediately.*

[190176_CBB_Resignation_20190801.pdf](#)

[180354.](#)**Federal Lobbying and Advocacy Services for the City of Gainesville and Gainesville Regional Utilities (B)**

Explanation: On October 1, 2017, the City retained the services of Van Scoyoc Associates, Inc. as a federal lobbyist in Washington, D.C., in connection with matters concerning the City on behalf of its General Government and its Utility. The current agreement for federal lobbying and advocacy services will expire on September 30, 2019.

The consultant provides lobbying and advocacy services and monitors important legislative matters that could affect the city in areas of housing, utilities, water projects, economic redevelopment, transportation, and other areas. Staff believes it is in the best interest of the City to renew the contract for one additional year; the period of October 1, 2019 through September 30, 2020.

Fiscal Note: Consultant services not-to-exceed \$75,600 or 70% of annual contract for the City's General Government; and a maximum amount not-to-exceed \$32,400 or 30% of annual contract for

Gainesville Regional Utilities, for a combined maximum amount not to exceed \$108,000.

RECOMMENDATION The City Commission renew the contract with Van Scoyoc Associates, Inc. for fiscal year 2020.

Legislative History

9/20/18 City Commission Approved as Recommended

[180354A Federal Lobbying Contract 20190801](#)

[180354B Amendment 1 to Federal Lobbying Contract 20190801](#)

[180354C Amendment 2 to Federal Lobbying Contract 20190801](#)

[180355.](#)

State Lobbying and Advocacy Services for the City of Gainesville and Gainesville Regional Utilities (B)

Explanation: On October 1, 2017, the City retained the services of Peebles, Smith and Matthews, Inc. for state lobbying and advocacy services in Tallahassee, FL, in connection with matters concerning the City on behalf of its General Government and its Utility. The current agreement for State of Florida lobbying and advocacy services will end on September 30, 2019.

The consultant provides lobbying and advocacy services and monitors important legislative matters that could affect the city in areas of housing, utilities, water projects, economic redevelopment, transportation, and other areas. Staff believes it is in the best interest of the City to renew the contract for one additional year; the period of October 1, 2019 through September 30, 2020.

Fiscal Note: Consultant services not-to-exceed \$36,000 or 50% of annual contract for the City's General Government; and a maximum amount not-to-exceed \$36,000 or 50% of annual contract for

Gainesville Regional Utilities, for a combined maximum amount not to exceed \$72,000. Approved travel costs shall be billed monthly and shall not exceed three (3) percent of the total contract. Funding has been identified in the Proposed FY 2020 Budget by General Government and its Utility.

RECOMMENDATION *The City Commission renew the contract with Peebles, Smith and Matthews, Inc. for fiscal year 2020.*

Legislative History

9/20/18 City Commission Approved as Recommended

[180355A State Lobbying Contract 20190801](#)

[180355B Amendment 1 to State Lobbying Contract 20190801](#)

[180355C Amendment 2 to State Lobbying Contract 20190801](#)

[180999.](#)

Living Wage Requirements for Contractors (B)

Explanation: At the June 6, 2019 City Commission meeting, at the request of Mayor Poe, the Commission discussed directing the City Attorney to prepare a draft ordinance regarding payment of living wages by contractors that would mirror Alachua County's Code and place it on the June 20th meeting for discussion. The City Attorney advised that due to the short turnaround time, the City Attorney's Office would place the County's Code on the June 20th meeting for discussion by the City Commission. At the June 20, 2019 City Commission meeting, the City Attorney provided the Commission with a copy of the current City and County Codes regarding living wage requirements for contractors, a staff prepared document that summarized and compared both Codes and a copy of a 2017 staff report on this topic. The Commission discussed the matter and directed the City Attorney draft an ordinance (for further discussion by the Commission, not first reading) that mirrors the minimum wage requirements in Alachua County's Code with further revisions as follows: apply to all service contracts with the City regardless of dollar value; set the living wage as the wage paid to the lowest paid city employee plus \$2.10 (if no health insurance is provided by the contractor); and apply the new requirements to contracts solicited by the City after October 1, 2019.

The City Attorney began work on a draft ordinance and circulated it for review and discussion by GRU and General Government staff, as well as the Equal Opportunity Office and the Auditors Office. Because of the magnitude of such a Code revision, in particular that it would apply to all services purchased by the City regardless of dollar value, City staff is engaged in examining the anticipated impacts (including specifically, how it may affect volume of bids received, cost increases and the administrative burdens/other effects it may have on small, women and minority-owned businesses). In addition, staff is considering further clarification on what it means to have a "contract" with the City, who is

“directly involved” in providing a service to the City, who should violations be reported to and who within the City would handle investigations. Staff requests this matter be referred to the General Policy Committee so that staff may present further information that will enable the Commission to make an informed decision on how to proceed.

Fiscal Note: N/A

RECOMMENDATION *City Commission refer this item to the General Policy Committee.*

Legislative History

4/18/19 City Commission Referred to the General Policy Committee
6/20/19 City Commission Approved, as shown above

[180999A_Alachua County Code_20190620.pdf](#)

[180999B_Gainesville City Code_20190620.pdf](#)

[180999C_Staff Comparison of Codes_20190620.pdf](#)

[180999D_Staff Report Dated October 2017_20190620.pdf](#)

[190143.](#)

Fourth Amendment to Interlocal Agreement with Alachua County for Solid Waste Disposal (B)

This item is a request to amend the agreement between the City of Gainesville (City) and Alachua County (County) for solid waste disposal services and extend the agreement through FY21.

Explanation: The City-County Interlocal Agreement for Solid Waste Disposal of May 12, 1998, First Amendment dated September 28, 2004, Memorandum of Understanding dated November 23, 2004, Second Amendment dated October 23, 2007, and the Third Amendment dated October 1, 2009 obligates the City to require its residential solid waste contractor to deliver all acceptable waste collected within the city to the County’s designated facilities.

The Agreement obligates City and County staff to work together on various solid waste issues agreed to by the City and County Commissions such as working together on solid waste issues and programs, sharing expertise and costs associated with the maintenance of identified closed landfills within the city limits, developing and implementing ordinances that direct the flow of solid waste generated within Alachua County to the County’s publicly-owned transfer station, and exercising the option of implementing one or more exclusive franchises should that approach become necessary.

In this Fourth Amendment to the Interlocal Agreement the City and County ratify that the terms of the Interlocal Agreement and its amendments have been continuously in effect and agree to extend the

term of the Interlocal Agreement through September 30, 2021.

Fiscal Note: Funds for the Fourth Amendment to this contract in the amount of approximately \$1.5 million is provided for and available in the Public Works Solid Waste Enterprise Fund.

RECOMMENDATION

The City Commission authorize the City Manager and or designee to execute the Fourth Amendment and other necessary documents, subject to approval by the City Attorney as to form and legality.

[190143 4th Amendment 20190801.pdf](#)

[190167.](#)

Contract Continuation with Enterprise FM Trust-Vehicle Leasing Agreement for the Gainesville Police Department (NB)

This item is a request for the City Commission to authorize the waiver of the bid process and continue the participation in the ongoing contract with Enterprise FM Trust for an additional five years.

Explanation: The Police Department has had an ongoing contract with Enterprise FM Trust since 2013. The department needed the ability to obtain vehicles to be utilized in a covert capacity for various investigations. The nature of these investigations necessitates the ability to swap out these vehicles frequently to prevent or alleviate concerns the vehicle compromised the investigations. Enterprise also works with other North Florida agencies such as Alachua County Sheriff's Office, Flagler County Sheriff's Office and the City of Lake City, which keeps us all informed of what other agencies are experiencing with their undercover operations vehicles. Under the existing contract, during the past 12 months, GPD has used this contract to provide 5 vehicles to command staff so their assigned fleet vehicles could be outfitted for use by temporary staff assigned to the Police Service Technicians.

We have obtained the results of recent RFPs from the State of Florida for rental vehicles, the City of Orlando and the Preferred Rate Agreement offered to local governmental entities in Monroe, Miami-Dade, Broward, Palm Beach and Martin Counties. The prices paid under our agreement with Enterprise average \$300 to \$400 less per vehicle per month than the rates offered to the other cities and are \$800 to \$1000 less per vehicle per month than the State of Florida contract pricing for vehicle rentals. Purchasing conducted the same search and had the same findings.

The services provided by Enterprise Fleet Management are uniquely specialized in their provision of vehicles utilized by several North Florida law enforcement agencies. The specialized services provided are detailed below.

Through Enterprise we are assigned a dedicated Account Team that is local in North Florida that we see 2-4 times per year as needed. The Account Manager assists us through the ordering and replacement strategy every year. Enterprise also provides us with a dedicated Account Fleet Coordinator to help with administrative, billing and tag questions. We have a dedicated Delivery Coordinator with Enterprise. All three people have been assigned to the City of Gainesville since the contract was initiated in 2013. The services provided by Enterprise are comprehensive. The Account Manager does all of the legwork in managing these vehicles. The representative meets with us 2-3 times a year to review vehicles that will suit our need or vehicles that have not worked well. She gives us a schedule of when the current vehicles are terminating off lease and advises when we need to start the planning and ordering process.

They continually ask and improve how they do business with us and bring more ideas to the table. Once the needs are outlined, Enterprise runs all of the makes and models that can be delivered within our timeframe and makes sure they are equipped properly for the job, without unnecessary upgrades or additional charges. We are also provided with the option of 1 or 2 year leases, with as many mileage patterns for each vehicle as we need. This means we do not have to go to multiple dealers for pricing because she runs all of the options and compiles the least expensive ones in every category. She also informs us of manufacturers who are on a longer build schedule than others so we can weigh the cost of waiting. Once vehicles are set to come in, Enterprise coordinates any special delivery needs we may have. They allow several delivery methods such as pickup from local Enterprise branches, a neutral location, dealerships or direct delivery.

Vehicle damage has been repaired by Enterprise at a fraction of the price we were able to obtain from other repair service providers. Example: A vehicle received damage to its side during an investigation. We received 3 bids to fix the item which came in at \$1,300.00. Enterprise received the vehicle and repaired it for \$1080.00. This is not written into the contract but as a company they fix/repair the vehicles at a much lower rate than is available elsewhere. In addition, ASO has had the same results after turning in vehicles which required repairs.

Due to the low pricing, unique requirements of undercover law enforcement, and history of prior exemplary service, we are asking that the City Manager/Commission 1) Waive the bid requirement; and 2) Continue use of this contract for another 5 years.

Fiscal Note: Funds in the amount of approximately \$100,000 per year are available in the Gainesville Police Departments general budget.

RECOMMENDATION

The City Commission: 1) authorize the waiver of the bid process; and 2) continue the participation in the ongoing contract with Enterprise FM Trust for an additional five years.

[190142.](#)**GRU Operational Update for the Month of June 2019 (B)**

Explanation: Staff has prepared an informational report of GRU's operations for the month of June 2019.

Fiscal Note: None.

RECOMMENDATION

Receive report.

[190142_Ops_Update_June_2019_All_Depts_20190801](#)

ADOPTION OF REGULAR AGENDA

GENERAL PUBLIC COMMENT - For items not on the agenda, limited to 3 minutes per citizen and not to exceed 30 minutes total

BUSINESS DISCUSSION ITEMS - GRU and General Government items placed on the agenda by the Charter Officers or moved from Consent.

[190128.](#)**Appointments to the Board of Trustees of The Consolidated Police Officers' and Firefighters' Retirement Plan, Historic Preservation Board and the Gainesville/Alachua County Regional Airport Authority (B)****RECOMMENDATION**

The City Commission discuss appointments to the Board of Trustees of The Consolidated Police Officers' and Firefighters' Retirement Plan, Historic Preservation Board and the Gainesville/Alachua County Regional Airport Authority and take appropriate action.

[190128_BOT Ballot_20190801.pdf](#)

[190128_BOT Apps_20190801.pdf](#)

[190128_HP_Ballot_20190801.pdf](#)

[190128_HP Apps_20190801.pdf](#)

[190128_GACRAA Ballot_20190801.pdf](#)

[190128_GACRAA Apps_20190801.pdf](#)

[190077.](#)**City Auditor Executive Search Plan (B)**

Explanation: Carlos Holt, City Auditor, was terminated effective June 6, 2019. Eileen Marzak was named Interim City Auditor effective June 7, 2019. Qian Yuan will replace Eileen Marzak as Interim City Auditor on June 24, 2019. In order to hire a new City Auditor, it is necessary to initiate a

search to find suitable candidates to fill this position.

Fiscal Note: The anticipated fiscal impact of the proposed recommendation is \$30,000. This amount includes \$24,000 in search fees and \$6,000 allocated for candidate travel and other expenses. This will be funded through unallocated general fund balance.

RECOMMENDATION

The City Commission (1) provide direction for an Executive Search Plan for the City Auditor position developed by the Human Resources Department, and (2) authorize the Human Resources Department to engage the services of an Executive Search Firm currently on retainer with the City to initiate the search.

Legislative History

7/18/19 City Commission Continued

[190077A_City Auditor Job Description_20190620.pdf](#)

[190179.](#)

GRU Storm Preparation and Recovery (B)

****This item is informational.****

Explanation: At the City Commission meeting on May 2, 2019, the Commission requested that GRU staff give an informational presentation on GRU's pre-storm preparation and post-storm recovery and restoration processes.

Fiscal Note: None.

RECOMMENDATION

Hear a presentation from staff.

[190179 GRU Storm Prep Response Presentation 20190801](#)

[190184.](#)

Participating in Litigation (B)

Explanation: Recently, there has been an increase in Commission requests for information about participating in litigation filed by other parties. Most recently during Commission Comment at the June 20th City Commission meeting, the Commission requested the City Attorney's Office report back on participating in the litigation that the Southern Poverty Law Center is filing to challenge Senate Bill 168 (SB 168) regarding Federal Immigration Enforcement.

Participating in litigation cannot be based on simply agreeing or disagreeing with a cause or political viewpoint. First, a factual analysis must be done to determine that the issue being litigated impacts (or has the potential to impact) City operations (i.e., the City must state a cause of action.) Second, a legal analysis must be done to determine that valid

legal arguments exist to support the City's cause of action. Finally, both the City's cause of action and its legal arguments must be in alignment with (and not contrary to) the party filing the litigation. The City Attorney's Office has prepared an informational memorandum (a copy of which is provided in the back-up) to assist the Commission in generally understanding when it is appropriate and permissible for the City to participate in litigation brought by other parties.

As to SB 168 in particular, shortly after it was approved by the Governor as Chapter Law 2019-102 (a copy of which is provided in the back-up) on June 14, 2019, the City Attorney's Office forwarded a copy to GPD Management and the City Manager. GPD Management and City Attorney staff reviewed and discussed the new law and determined that the portions that apply to GPD were largely a restatement of existing Federal law and do not alter GPD operations or policy, nor direct the use of GPD resources.

In summary, SB 168: 1) prohibits the City from having a "sanctuary policy" (the City has chosen not to have a sanctuary policy, because the City would be unable to certify as to its compliance with Federal Law and that would render the City ineligible for certain Federal funding); 2) Requires the City to cooperate with federal immigration authorities, by not prohibiting or in any way restricting GPD from sending, receiving, maintaining, exchanging or using information regarding a person's immigration status (the City already has to certify that it does not so prohibit or restrict in connection with its annual receipt of Federal funding. These provisions of SB 168 do not require the City to take any further action); 3) Requires judges, correctional facilities and law enforcement agencies that take custody of or transport person to take certain actions with respect to immigration detainees (GPD does not fall within this group); 4) Provides certain protections for victims and witnesses; and 5) Prohibits the City from basing its actions under the new Law on the gender, race, religion, national origin or physical disability of a person.

Upon the Commission's request to report back on joining the litigation challenging SB 168, City Attorney's Office staff spoke to staff at the Southern Poverty Law Center, reviewed the Resolution adopted by the City of South Miami and reviewed the Complaint filed by the Southern Poverty Law Center, the Community Justice Project, Inc. and the Immigration Clinic at the University of Miami School of Law on behalf of the City of South Miami and 7 advocacy groups (the "Plaintiffs".) A copy of the Complaint and the Resolution are provided in the back-up.

The claim of the City of South Miami is that it is unable to understand the new law and that will cause the City of South Miami to enforce the new law in a manner that is arbitrary and discriminatory and that the City of South Miami will be forced to expend its limited resources without reimbursement. The legal basis articulated for challenge is that it 1) violates the Supremacy Clause of the US Constitution because it unlawfully legislates in an area occupied by federal law; 2) violates the Due Process Clause of the 14th Amendment to the US Constitution

because it fails to provide a person of ordinary intelligence of what is prohibited and this encourages arbitrary and discriminatory enforcement; and 3) violates the Equal Protection Clause of the 14th Amendment to the US Constitution because it authorizes impermissible discrimination by local governments on the basis of race, color and national origin.

City of Gainesville staff (City Attorney, GPD and City Management) do not believe the City of Gainesville shares that claim. City staff is firmly of the opinion that we have read and understand the new law, that it does not require the City to take any action or expend any funds, that the City remains firmly in control of its GPD operations and resources and that the new law will not result in GPD taking, or tolerating any of its officers taking, arbitrary and discriminatory action.

The current GPD General Order regarding interactions with foreign nationals (a copy of which is provided in the back-up) states explicitly that "All individuals, regardless of citizenship, are entitled to basic rights and privileges which are set forth in common law, state and federal law, and the Florida and United States Constitutions. In addition, foreign nationals (persons who are not US citizens) may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of the department to provide service to all persons and to exercise its duties in conformance with all applicable laws, regardless of citizenship status, nationality, or racial/ethnic background." The General Order goes on to provide clear guidance that GPD officers are not authorized to engage in Federal Immigration Enforcement and that GPD employees provide service to all persons regardless of their citizenship status. SB 168 does not require or necessitate any modification to the General Order.

GPD staff has worked very closely with local immigrant advocacy groups in updating its General Order and participating in local information sessions and outreach to foster trust in GPD operations and to assure all persons, regardless of their citizenship status, that GPD will not take, or tolerate its officers taking, actions that are discriminatory or harassing. Officers who violate GPD Policy and General Orders are subject to discipline.

Based on the foregoing analysis, there does not appear to be a factual or legal basis for the City to participate in the pending litigation. If the City Commission wishes to express its support for a cause or address a political issue, it may consider adopting a resolution or engaging in lobbying activities at the State and Federal level or financially supporting organizations that serve a municipal public purpose.

RECOMMENDATION *Hear a staff presentation.*

[190184A_Memorandum_20190801.pdf](#)

[190184B_Senate_Bill_168_20190801.pdf](#)

[190184C_Complaint_20190801.pdf](#)

[190184D_South_Miami_Resolution_20190801.pdf](#)

[190184E_General_Order_20190801.pdf](#)

[190178.](#)

2019 Agreement between the School Board of Alachua County, Florida and the City of Gainesville for the School Resource Officer Program (B)

This is a request for City Commission approval of the City of Gainesville 2019 Agreement with the School Board of Alachua County for the School Resource Officer Program. This agreement mandates (20) School Resource Officers to staff the schools inside the incorporated city limits of Gainesville.

Explanation: The Gainesville Police Department (GPD) and the School Board of Alachua County (SBAC) desire to continue to work in partnership to provide School Resource Officers (SRO) to city-wide schools in Gainesville. This crime prevention initiative shares the cost of staffing and training between the School Board and the City Gainesville Police Department.

The City Gainesville Police Department shall assign police officers/facilitators as School Resource Officers to cover each of the following schools as listed below:

*The following Schools shall have two (2) SROs assigned per school:
Gainesville High School, 1900 NW 13th Street, Gainesville
A. Quinn Jones Center, 1108 NW 7th Avenue, Gainesville*

*The following Schools shall have one (1) SRO assigned per school:
Westwood Middle School, 3215 NW 15th Avenue, Gainesville
Howard Bishop Middle School, 1901 NE 9 1h Street, Gainesville
Lincoln Middle School, 1001 SE 10th Avenue, Gainesville
Sidney Lather Center, 312 NW 16 01 Avenue, Gainesville
Loften High School, 3000 E. University Avenue, Gainesville
Glen Springs Elementary School, 2826 NW 31st Avenue, Gainesville
Littlewood Elementary School, 812 NW 30 Street, Gainesville
J.J. Finley Elementary School, 1912 NW 5th Avenue, Gainesville
Metcalf Elementary School, 1905 NE 12th Street, Gainesville
Rawlings Elementary School, 3500 NE 15th Street, Gainesville
Norton Elementary School, 2200 NW 45th Avenue, Gainesville
Stephen Foster Elementary School, 3800 NW 6th Street, Gainesville
Terwilliger Elementary School, 301 NW 62" Street, Gainesville
Talbot Elementary School, 5701 NW 43id Street, Gainesville
Williams Elementary School, 1245 SE 7th Avenue, Gainesville
Duval Early Learning Center, 2106 NE 8th Avenue, Gainesville*

The School Board of Alachua County, Florida authorized the Superintendent to negotiate an agreement with the different law enforcement agencies and will approve this contract at the next scheduled School Board meeting.

Fiscal Note: This program is funded jointly through an inter-governmental agreement with the School Board of Alachua County, Florida. SBAC agrees to pay \$1,200,000.00 as its share toward the School Resource Officer Program from August 1, 2019 to July 31, 2020. Funds provided by the SBAC during the term of this Agreement for the cost of the School Resource Officers shall be paid to the City in twelve (12) equal monthly payments beginning August 31, 2019. Monthly payments shall be 1/12 of the agreed-upon total share, provided that all twenty (20) positions are staffed by August 31, 2019. If any of the twenty (20) SRO positions are not staffed or become vacant for more than thirty calendar days following August 2019, monthly payments shall be reduced in an amount equal to the non-staffed portion of the twenty (20) total positions (1/20 of the total allowable monthly payment or \$3,146.25 per non-staffed position per month).

Under this 2019 contract, SBAC will pay \$1,200,000.00 per year to the City toward the cost of twenty (20) SROs, an increase from the prior contract under which SBAC paid approximately \$984,049.

RECOMMENDATION

The City Commission: 1) approve the agreement in the amount of \$1,200,000.00 between the City of Gainesville and the School Board of Alachua County, Florida for the School Resource Officer Program; and 2) authorize the City Manager to sign the inter-local agreement with the Alachua County School; and 3) authorize the City Manager to execute any other necessary documents subject to approval by the City Attorney as to form and legality.

[190178 SRO Contract \(GPD\) 2019-2020 Final 20190801](#)

[190191.](#)

Commissioner Helen Warren - Truth & Reconciliation Presentation (NB)

AGENDA UPDATE - ADDED ITEM

RECOMMENDATION

The City Commission hear a presentation and take action deemed necessary.

COMMISSION COMMENT

4:30 - 5:30pm DINNER BREAK

5:30 - CALL TO ORDER - Evening Session

PLEDGE OF ALLEGIANCE**PROCLAMATIONS/SPECIAL RECOGNITIONS****TIME CERTAIN - 6:00 PM**[180678.](#)**Prohibiting Single-Use Plastic Straws and Stirrers (B)**

Ordinance No. 180678

An ordinance of the City of Gainesville, Florida, amending the Code of Ordinances to prohibit single-use plastic straws and single-use stirrers by creating a new Division 5 within Article III of Chapter 27; by amending Section 2-339 to provide a civil citation penalty; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date and an enforcement date.

Explanation: The General Policy Committee, at its meeting on February 14, 2019, discussed and directed staff to draft an ordinance for further discussion by the Commission. The City Commission, at its meeting on May 16, 2019, discussed the draft and directed the City Attorney's Office to finalize an ordinance for first reading.

RECOMMENDATION

The City Commission adopt the proposed ordinance.

Legislative History

1/17/19	City Commission	Referred to the General Policy Committee
1/24/19	General Policy Committee	Continued
2/14/19	General Policy Committee	Approved, as shown above
7/18/19	City Commission	Continued

[180678_2018-12-13 Council Agenda_20190124_GPC_20190214.pdf](#)

[180678_Resolution Ban Cities & Counties_20190124_GPC_20190214.pdf](#)

[180678_draft ordinance_20190718.pdf](#)

GENERAL PUBLIC COMMENT - For items not on the agenda, limited to 3 minutes per citizen and not to exceed 30 minutes total**RESOLUTIONS - ROLL CALL REQUIRED**[190055.](#)**Land Rights Resolution - FDOT Project to Upgrade and Renovate the Intersection of Newberry Road and Northwest 39th Road (B)**

This item is a request to adopt a Resolution to grant land rights to the Florida Department of Transportation (FDOT.)

Explanation: The Florida Department of Transportation (FDOT) has an upcoming project to upgrade and renovate the intersection of Newberry Road and Northwest 39th Road. FDOT is requiring conveyance of fee title interest for ADA and Signal Improvements.

Staff believes it is in the best interest for the City to grant the request.

Fiscal Note: There is no fiscal impact with this request.

RECOMMENDATION

The City Commission: 1) adopt a Resolution granting land rights to the Florida Department of Transportation; and 2) authorize the Mayor to execute the Deed to the Florida Department of Transportation, subject to the approval of the City Attorney as to form and legality.

Legislative History

7/18/19 City Commission Continued

[190055A_Deed_20190718_20190801.pdf](#)

[190055B_FDOT_Resolution_Deed_SR26_20190718_20190801.pdf](#)

[190055C_Sketch_20190718_20190801.pdf](#)

190145.

Reimbursement Resolution Related to Capital Projects (B)

Resolution No. 190145

A Resolution expressing the intent of the city of Gainesville, Florida to incur costs related to capital projects located in the city of Gainesville and more particularly described herein; expressing the intent for purposes of compliance with united states treasury regulation section 1.150-2 to reimburse with the proceeds of revenue bonds the capital expenditures made with respect to such projects; providing for the issuance by the city of notes, bonds or other obligations in one or more series in an aggregate principal amount not exceeding \$8,500,000 to pay the cost of such projects; and providing an effective date.

Explanation: During the FY18 budget process the City Commission approved a \$13.5 million bond issuance. Due to changes in strategy and budget constraints, this issuance did not take place. As part of the FY20 budget process, the City Commission tentatively approved an \$8.5 million bond issue to fund Fire Ladder Truck, Fire Station Land Evaluation & Acquisition, City Hall Roof Replacement, Body Worn Cameras, Radio

Replacement, LED Streetlights, ADA Compliance projects and GFR Equipment Replacement. The attached Reimbursement Resolution provides a mechanism for the City to be reimbursed from bond proceeds for project costs that are incurred on or after the date of this Resolution and before the issuance of the Bonds while remaining in compliance with Treasury regulations. Adoption of this resolution will allow the City to be reimbursed from debt proceeds for certain costs incurred prior to issuance of debt to fund the acquisition.

Fiscal Note: The \$8.5 Million bond issue is anticipated to take place in the first quarter of FY20 and provide funding for the capital projects noted above, some of which may be purchased after the approval of this resolution but prior to receipt of the bond proceeds based on operational needs.

RECOMMENDATION *The City Commission adopt the Reimbursement Resolution related to capital projects.*

Legislative History

7/18/19 City Commission Continued

[190145_Reimbursement Resolution_20190801.pdf](#)

[190100.](#)

Resolution for Amendment to the Traffic Signal Maintenance and Compensation Agreement with FDOT (B)

This item is a request to amend the Florida Department of Transportation Traffic Signal Maintenance and Compensation Agreement.

Explanation: The Florida Department of Transportation (FDOT) currently compensates the City of Gainesville for maintenance of Intelligent Transportation System (ITS) infrastructure along the State Highway System (SHS). This includes traffic signals, school beacons, blank out signs, travel time detector, within city limits. This increase in compensation reflects new state FY19/20 rates.

Fiscal Note: The Florida Department of Transportation compensates the City annually for Traffic Signal Maintenance. The amount to be reimbursed for State FY19/20 is \$694,452.00. Last State FY18-19, the reimbursement amount was \$676,020.00. The 2.7265% reimbursement increase is due to the increase reimbursement rates for Traffic Signals and Intelligent Transportation System devices.

RECOMMENDATION *The City Commission: 1) adopt the Resolution for an Amendment to the Traffic Signal Maintenance and Compensation Agreement with the Florida Department of Transportation; and, 2) authorize the City Manager to execute all necessary documents, subject to approval by the City Attorney as to form and legality.*

Legislative History

7/18/19 City Commission Continued

[190100A Agree Traffic Signals 20190801](#)
[190100B Res150028 Traffic Signals 20190801](#)
[190100C Amend Traffic Signals 20190801](#)
[190100D Res160292 Traffic Signals 20190801](#)
[190100E Amend Traffic Signals 20190801](#)
[190100F Res170273 Traffic Signals 20190801](#)
[190100G Amend Traffic Signals 20190801](#)
[190100H Res171050 Traffic Signals 20190801](#)
[190100I PROPOSED Amend Traffic Signals 20190801](#)
[190100J PROPOSED Ex-A Traffic Signals 20190801](#)
[190100K DRAFT Res Traffic Signals 20190801](#)

[180153.](#)

Community ID Card Program (B)

AGENDA UPDATE - REMOVE ITEM

Explanation: On July 19, 2018, Mayor Poe placed an item on the City Commission agenda to discuss community identification cards. After discussion and presentation from a local group interested in issuing such cards, the Commission directed city staff to determine in what circumstances a locally-issued ID could be accepted in lieu of a state-issued ID, including, but not limited to, law enforcement, city services and medical care. The Charter Officers gathered information from their respective staff on when the City requests identification from third parties in their transactions/interactions with the City and created the table attached as back-up to this item. In addition, information provided by the entity that plans to issue community identification cards is attached as back-up to this item.

Fiscal Note: No fiscal impact, the City will not be issuing the identification cards.

RECOMMENDATION Review information provided and discuss.

Legislative History

7/19/18	City Commission	Approved, as shown above
10/11/18	General Policy Committee	Approved, as shown above

[180153 FaithAction ID Program Resource 20180719.pdf](#)
[180153 8 Keys to a successful community ID program 20180719.pdf](#)
[180153 C-Arreola Submittal Community ID Program 20180719.pdf](#)
[180153 C Arreola Submittal Community ID 20180719.pdf](#)
[180153A HRC Information 20181011.pdf](#)
[180153B Table - Charter Officers 20181011.pdf](#)

PUBLIC HEARINGS[180859.](#)**Request to Vacate Public Right-of-Way for a portion of SW 7th Avenue Located East of the Intersection of SW 9th Street and SW 7th Avenue (B)**

Petition PB-18-173 SVA. Midtown Properties of Gainesville, LLC, applicant to vacate a public right-of-way for a portion of SW 7th Avenue located east of the intersection of SW 9th Street and SW 7th Avenue.

Explanation: Petition to vacate a portion of public right-of-way on the eastern portion of SW 7th Avenue lying east of the intersection of SW 9th Street and SW 7th Avenue, south of Lot 104, and north of lot 103, within the plat of O.A. Porter's Addition. The portion of right-of-way to be vacated is approximately 35 feet wide and approximately 100 feet long and does not provide through access. Only a portion of the right-of-way is improved and terminates into a wetland area.

The criteria for the vacation of public streets or public places are found in both Policy 10.2.1 of the Transportation Mobility Element of the Comprehensive Plan and Section 30-192 of the Land Development Code. Specifically, Policy 10.2.1 of the Transportation Mobility Element states that the City shall not close or vacate streets except under the following conditions: A) the loss of the street will not foreclose reasonably foreseeable future bicycle/pedestrian use; B) the loss of the street will not foreclose non-motorized access to adjacent land uses or transit stops; C) the loss of the street is necessary for the construction of a high density, mixed-use project containing both residential and non-residential uses or creating close proximity of residential and non-residential uses; and D) there is no reasonably foreseeable need for any type of transportation corridor for the area. Section 30-192 of the Land Development Code states that, in order to vacate public right-of-way, the City Commission shall find that: A) the public street or public place no longer serves a public purpose; or B) the vacation of the public street or public place is in the public interest. In making this determination, Section 30-192 requires the City Commission to consider the following criteria in determining whether the vacation is in the public interest: A) whether the public benefits from the use of the subject right-of-way as part of the city street system; B) whether the proposed action is consistent with the Comprehensive Plan; C) whether the proposed action would deny access to private property; D) the effect of the proposed action upon public safety; E) the effect of the proposed action upon the safety of pedestrians and vehicular traffic; F) the effect of the proposed action upon the provision of municipal services including but not limited to emergency service and waste removal; G) the necessity to relocate both public and private utilities; and H) the effect of the proposed action on the design and character of the area.

The City Plan Board held a public hearing on March 28, 2019. Postcard notices were mailed to surrounding property owners on March 13, 2019.

A neighborhood workshop was held on February 28, 2019.

Fiscal Note: None

RECOMMENDATION

*City Plan Board to City Commission - The City Commission deny Petition PB-18-173 SVA.
The City Plan Board voted 3-1.
Staff to City Commission - The City Commission approve Petition PB-18-173 SVA.
Staff to City Plan Board - The City Plan Board approve Petition PB-18-173 SVA.*

Legislative History

3/28/19 City Plan Board Approved

[180859A Staff Report w Exhibits 1 - 3 20190801](#)

[180859B PB-18-173 SVA 03.28.19 CPB minutes 20190801](#)

[180859C PB-18-173 SVA Staff PPT 20190801](#)

[180859D Engagement Note 20190801](#)

[180860.](#)

Vacation of Right-Of-Way for the Southern Portion of SW 5th Terrace and a Segment of an Adjacent Alley Located Southeast of the Intersection of SW 6th Street and SW 4th Avenue (B)

Petition PB-19-010 SVA. City Plan Board. Right-of-Way Vacation for a southern portion of SW 5th Terrace and a segment of an alley located south of the intersection of SW 4th Avenue and SW 6th Street.

AGENDA UPDATE - CHANGED TEXT FILE AND REVISED BACK-UP

*Explanation: This ordinance vacates a public right-of-way that is an approximately 10'x150' portion of SW 5th Terrace (south side) lying between SW 5th Avenue and SW 4th Avenue; and approximately 22'x 266' portion of the adjacent alley.
This petition was initiated by the City Commission on November 15, 2018. The property is located within the Porters Neighborhood.
The criteria for the vacation of public streets or public places are found in both Policy 10.2.1 of the Transportation Mobility Element of the Comprehensive Plan and Section 30-192 of the Land Development Code. Specifically, Policy 10.2.1 of the Transportation Mobility Element states that the City shall not close or vacate streets except under the following conditions: A) the loss of the street will not foreclose reasonably foreseeable future bicycle/pedestrian use; B) the loss of the street will not foreclose non-motorized access to adjacent land uses or transit stops; C) the loss of the street is necessary for the construction of a high density, mixed-use project containing both residential and non-residential uses or creating close proximity of residential and non-residential uses; and D) there is no reasonably foreseeable need for any type of transportation corridor for the area. Section 30-192 of the Land Development Code states that, in order to vacate public right-of-way, the*

City Commission shall find that: A) the public street or public place no longer serves a public purpose; or B) the vacation of the public street or public place is in the public interest. In making this determination, Section 30-192 requires the City Commission to consider the following criteria in determining whether the vacation is in the public interest: A) whether the public benefits from the use of the subject right-of-way as part of the city street system; B) whether the proposed action is consistent with the Comprehensive Plan; C) whether the proposed action would deny access to private property; D) the effect of the proposed action upon public safety; E) the effect of the proposed action upon the safety of pedestrians and vehicular traffic; F) the effect of the proposed action upon the provision of municipal services including but not limited to emergency service and waste removal; G) the necessity to relocate both public and private utilities; and H) the effect of the proposed action on the design and character of the area.

The City Plan Board, on March 28, 2019, held a public hearing and voted to continue Petition PB-19-010 SVA to the April Plan Board meeting. Postcard notices were mailed to surrounding property owners on March 13, 2019. A neighborhood workshop was held on March 16, 2019. At the April 25, 2019, City Plan Board meeting the board recommended denial of PB-19-010 SVA.

Fiscal Note: None

RECOMMENDATION

Staff to City Plan Board - The City Plan Board approve Petition PB-19-010 SVA.

City Plan Board to City Commission - The City Commission deny Petition PB-19-010 SVA.

The City Plan Board voted 3-1.

Staff to City Commission - Four (4) options - 1)

The City Commission approve Petition PB-19-010

SVA as presented. 2) The City Commission

approve the vacation of the alley only. 3) The City

Commission approve the vacation of the adjacent

alley and authorize a land swap between the City

and the adjacent landowner for an equal portion of

SW 5th Terrace and. 4) The City Commission

deny Petition PB-19-010 SVA as presented.

Legislative History

3/28/19 City Plan Board Postponed

4/25/19 City Plan Board Approved

[180860A_Staff Report w Exhibits 1-3_20190801](#)

[180860B_PB-19-10SVA_03.28.19 CPB minutes_20190801](#)

[180860C_PB-19-10 SVA_04.25.19 CPB minutes_20190801](#)

[180860D_PB-19-010 SVA_Staff PPT_20190801](#)

[180860E_Engagement Note_20190801](#)

[180860F_MOD_PB-19-010 SVA_Staff PPT_20190801](#)

ORDINANCES, 2ND READING - ROLL CALL REQUIRED[180972.](#)**Request to Establish the Finley Woods Community Development District (B)**

Ordinance No. 180972

An ordinance of the City of Gainesville, Florida, establishing the Finley Woods Community Development District, pursuant to Chapter 190, Florida Statutes; naming the District; describing the external boundaries of the District; describing the functions and powers of the District; designating five persons to serve as the initial members of the District's Board of Supervisors; providing a severability clause; providing a repealing clause; and providing an effective date.

Explanation: STAFF REPORT

This item is a request from a private land owner/developer for the City Commission to create a Community Development District ("CDD") within the City of Gainesville. The first part of this agenda summary will provide a general overview of CDDs in Florida, including the mechanics and potential advantages and disadvantages of CDDs. The second part will provide details regarding the particular CDD that the City Commission has been asked to create.

Part I - CDDs in Florida

CDDs, as provided for in Chapter 190, Florida Statutes, are independent special taxing districts that operate as "a local unit of special-purpose government" to serve as an alternative method for financing and maintaining community development infrastructure and services. To grant the request and create the CDD, the City Commission adopts an ordinance that, per statute, may only include: 1) a description of the subject area; 2) the name of the CDD; and 3) the names of five people selected by the owner/developer to serve as the initial members of the CDD Board until they are replaced in accordance with state law by members elected by CDD residents. If approved, the CDD operates as an independent quasi-public entity with no oversight by the City of Gainesville and has the powers provided for in state law, which include amongst other things the power to borrow money and issue bonds and notes, to assess ad valorem taxes, to levy special assessments, to issue user charges or fees, and to exercise eminent domain. To determine whether to grant or deny the request to create a CDD, the City Commission per statute shall consider the following factors:

- 1) Whether all statements contained within the petition have been found to be true and correct.*
- 2) Whether the establishment of the CDD is inconsistent with any*

applicable element or portion of the state comprehensive plan or of the City's Comprehensive Plan.

3) Whether the area of land within the proposed CDD is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

4) Whether the CDD is the best alternative available for delivering community development services and facilities to the area that will be served by the CDD.

5) Whether the community development services and facilities of the CDD will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

6) Whether the area that will be served by the CDD is amenable to separate special-district government.

The above criteria, particularly 4) and 6), necessitate prudent discretion from the City Commission. Therefore, it is helpful to review the purpose and mechanics of special taxing districts such as CDDs and some potential advantages and disadvantages of CDDs.

Special taxing districts historically began as a tool tied to traditional governmental functions such as providing public infrastructure, roads and bridges, water distribution, sewer services, fire and police safety, and the development of economically distressed areas, all under the general theory that municipalities were not equipped to handle certain functions with a particularly specific scope and that these items should not be, or just practically speaking could not be, supported by general government funds. The uses of special taxing districts expanded over the years, including for private real estate development as provided in Florida's Uniform Community Development District Act of 1980 (Chapter 190, F.S.). Under this Act, CDDs provide a mechanism whereby a developer-controlled CDD is able to: 1) obtain financing immediately through the issuance of long-term tax-exempt bonds at a lower cost than financing available through conventional lenders; 2) build the improvements immediately; and 3) structure the CDDs debt obligation to be paid back over time by the property owners within the CDD paying special assessments on their property tax bills. There are currently over 600 CDDs established throughout Florida, with the majority of those established between 2003-2007 during the housing boom and many experiencing default as a result of the housing crisis. Alachua County only has two CDDs: 1) Parker Road CDD approved by the Alachua County BOCC in 2006, which includes the Oakmont Development; and 2) Celebration Pointe CDD approved by the Alachua County BOCC in 2012.

The CDD structure can be advantageous for developers because projects can be completed with cheaper financing that is off the books of the developer (since the debt is owned by the CDD), and the ultimate cost of the improvements need not be recouped from the developer's sales proceeds from the lots within the development because it will be paid by future owners over time. CDDs can be advantageous to homeowners because they may avail themselves of infrastructure and

amenities that either the municipality or the developer may not have supported or financed; and because the debt is assumed long term via assessments on tax bills, the purchase price of the properties need not be inflated to account for the developer's need to repay the debt in the short term. CDDs can be advantageous for municipalities as an attractive economic development tool, whereby at no cost to the municipality developers can be incentivized by a CDD to provide infrastructure and services to residents leading to economic development and increased municipal tax revenues.

There are also a variety of potential disadvantages in the use of CDDs. First, CDDs are unilaterally controlled by the developer for generally between 6 and 8 years after creation with homeowners having little to no recourse in challenging the decisions of CDD Boards. Upon creation of a CDD, the developer may elect its own officers, employees, associates, or friends to serve on the CDD Board, and although the CDD Board is subject to the Sunshine Law and Public Records Law, Florida's Ethics Law exempts the developer's stockholders, officers, employees, or affiliates serving as CDD Board members or CDD employees from any conflict of interest limitations, and therefore they may permissibly make decisions in the best interests of the developer. Second, and even considering state law requires disclosures to prospective homebuyers within a CDD, the CDD structure can be confusing to homeowners, particularly its revenue collection on tax bills as a quasi-public entity and a CDD's powers and differences in respect to a Homeowner's Association or a municipality. In this vein, a potential criticism is that people who buy property in CDDs may unwittingly pay twice for any CDD benefits, meaning that even though the purchase price of the individual properties within a CDD theoretically need not be inflated to account for the developer's need to repay debt in the short term, the market rate purchase price may nevertheless be inflated as it naturally accounts for the infrastructure or amenities financed by the CDD since they are constructed immediately and then in addition the property owner will still be subject to long-term debt payments (i.e., assessments). Third, the law affords CDD liens imposed in connection with its assessments a superpriority that is coequal with other governmental liens, such as state, county, municipal, and school board taxes. This may have an impact on the conventional real estate lending market as well as the secondary mortgage market (similar to issues experienced with PACE programs). Fourth, the use of CDDs may present a difficulty for municipalities in treating similarly situated developers the same by also providing them with the CDD mechanism of lower-risk, lower-cost financing.

In light of this analysis, the City Commission should balance these competing interests and the potential advantages and disadvantages of CDDs as it determines whether to grant or deny any request to create a CDD, specifically as it exercises its prudent discretion in considering the six statutory factors provided above. As a framework for making such a decision, staff offers that the approval of CDDs is most appropriate or clearly advantageous to the public health, safety, and welfare and therefore should be approved only when both of the following two

conditions are met:

- 1) The project could not occur without public support, meaning the project could not be accomplished through conventional financing or equity financing through traditional channels; and
- 2) The project provides some unique benefit that furthers a discernable goal(s) of the City and the community, including but not limited to ameliorating an economically depressed or underserved area or providing uniquely beneficial infrastructure or services that would not otherwise be accomplished by the developer or the City.

Part II - Finley Woods CDD

The proposed Finley Woods CDD is a subset of the larger 118-acre Finley Woods Development. The 88-acre CDD boundaries will encompass Phases IC, II, and III of the subdivision and when constructed will contain 255 single-family residential lots. Phase IC is located south of SW 62nd Avenue and is currently under construction. Phases II and III are located north of SW 62nd Avenue. Phases II and III received design plat approval from the City Commission on February 7, 2019. Construction and engineering plans for Phase II are currently under review by City Departments. Electric service is currently provided by Clay Electric. Water and wastewater facilities are provided by GRU.

Infrastructure improvements that the Developer has proposed to finance through the City's creation of the Finley Woods CDD include: 1) entry signage; 2) stormwater facilities; 3) water and sewer service; 4) roadways; 5) street lights; and 6) roadway landscaping and hardscaping. Exhibit 7 of the Developer's CDD application provides cost estimates for all of the infrastructure improvements totaling \$10,897,287. With the exception of the proposed entry signage, it is important to note that the infrastructure improvements proposed by the Developer and outlined here are all required by the City's Land Development Code and are items that are typical with a common development of this type.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings and will become effective immediately upon adoption.

RECOMMENDATION

The City Commission hear presentations and consider whether to establish the Finley Woods CDD.

Legislative History

7/18/19 City Commission Adopted on First Reading (Ordinance)

[180972A draft ordinance 20190606.pdf](#)
[180972B petition 20190606.pdf](#)
[180972C supplement to petition 20190606.pdf](#)
[180972D staff ppt 20190606.pdf](#)
[180972E Supplemental Affidavit Kevin Plenzler 20190718.pdf](#)
[180972F LTR T. Williams & Amended Declaration 20190718.pdf](#)
[180972G Petitioner's Power Point 20190718.pdf](#)

[190114.](#)

Clarifying Definitions and Providing a New Enforcement Date for the Prohibition of Single-Use Carry Out Plastic Bags and Expanded Polystyrene Containers (B)

Ordinance No. 190114

An ordinance of the City of Gainesville, Florida, amending Sections 27-89 and 27-90 of the City Code of Ordinances, to clarify the definition of single-use carry out plastic bag; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date for this ordinance, but delaying enforcement of this ordinance and Ordinance No. 170487 until 8:00 A.M. on January 2, 2020.

Explanation: The City Commission, at its meeting of March 21, 2019, discussed the plastic ban ordinance education campaign and some areas of the current code provisions they may wish to amend. This discussion was continued to the March 28th General Policy Committee meeting. The General Policy Committee, at its meeting of March 28, 2019 discussed these topics further and directed the City Attorney's Office to draft an ordinance to revise the current code provisions.

AGENDA MODIFICATION

Explanation of modification: This item is being modified to provide the City Commission with additional back-up and to revise the staff recommendation. On July 1, 2019, Section 57.112, Florida Statutes (Chapter Law 2019-151) became effective. A copy of the new statute is provided in the back-up. The new statute states "[i]f a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party." The new statute also provides that if a local government is given written notice that an ordinance is expressly preempted and the local government acts within 30 days to notice an intent to repeal the ordinance and then acts within 30 days to repeal the ordinance, attorney fees and costs may not be awarded. On July 15, 2019, the City received notice from the Florida Retail Federation and the Florida Restaurant & Lodging Association (pursuant to the new statute)

requesting that the City repeal Ordinance No. 170487 regarding the prohibition of single-use carry out plastic bags and expanded polystyrene containers as such regulation is expressly preempted to the State by Sections 403.7033 and 500.90, Florida Statutes. A copy of this notice letter is provided in the back-up.

To avoid the risk of exposure for mandatory attorney fees, costs and damages, the City Attorney's Office recommends that the City Commission provide notice of its intent to repeal Ordinance No. 170487, direct the City Attorney to prepare and advertise a repealing ordinance and take no further action on proposed Ordinance No. 190114 at this time. The City Attorney's Office recommends repeal as a prudent step until the status of the State Law preemption is finally resolved. The Commission has been previously advised that there is on-going litigation regarding a similar Coral Gables ordinance and the state preemption statutes and although Coral Gables received a favorable ruling from the 11th Judicial Circuit for Miami-Dade County, that ruling is not binding precedent for the City of Gainesville and is currently on appeal before the Third District Court of Appeals. The Florida Retail Federation has informed the City Attorney that its attorney fees and costs in the Coral Gables litigation currently total \$102,500. This does not include an appeal to the Florida Supreme Court, which they are prepared to take, and does not include monetary damages which are likely to be asserted in future cases on behalf of their members. In addition, as the City was not planning to enforce the prohibitions until January 2, 2020, if the status of the State Law is resolved in a manner that clearly allows local governments to regulate, the City Commission can direct the City Attorney to promptly bring a prohibition ordinance back to the City Commission for adoption.

RECOMMENDATION

The City Commission (1) consider the newly enacted Section 57.112, Florida Statutes; (2) review the notice letter received by the City; (3) direct the City Attorney to prepare a Resolution (for the August 1st agenda) providing notice of its intent to repeal Ordinance No. 170487; (4) direct the City Attorney to prepare and advertise an ordinance to repeal Ordinance No. 170487 for first reading on August 1 and second reading on August 15; and (5) take no further action on proposed Ordinance No. 190114 at this time.

Legislative History

7/18/19 City Commission Adopted on First Reading (Ordinance)

[190114_draft ordinance_20190718.pdf](#)

[190114A_Chapter 2019-151_20190718.pdf](#)

[190114B_July 15 2019 Letter_20190718.pdf](#)

ORDINANCES, 1ST READING - ROLL CALL REQUIRED

[181064.](#)**Voluntary Annexation - 11.18 Acres of Property South of E University and West of SE 38th Street (B)**

Ordinance No. 181064

An ordinance of the City of Gainesville, Florida, annexing approximately 11.18 acres of privately-owned property generally located south of E University Avenue, west of SE 38th Street, north of parcel numbers 10889-000-000 and 10893-015-000, and east of parcel number 10890-000-000, as more specifically described in this ordinance, as petitioned for by the property owner(s) pursuant to Chapter 171, Florida Statutes; making certain findings; providing for inclusion of the property in Appendix I of the City Charter; providing for land use plan, zoning, and subdivision regulations, and enforcement of same; providing for persons engaged in any occupation, business, trade, or profession; providing directions to the Clerk of the Commission; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Explanation: This ordinance, at the request of the property owner of the subject property, will annex into the corporate limits of the City of Gainesville approximately 11.18 acres of privately-owned property that consist of parcels numbers 10891-000-000, 10891-001-000, and 18092-000-000, generally located south of E University Avenue, west of SE 38th Street, north of parcel numbers 10889-000-000 and 10893-015-000, and east of parcel number 10890-000-000. On June 6, 2019, the City Commission received and accepted a petition for voluntary annexation and directed the City Attorney to prepare this annexation ordinance.

Municipal annexation in Florida is governed by the Municipal Annexation or Contraction Act (the "Act"), which is found in Chapter 171, Florida Statutes. Section 171.044, F.S., sets forth the requirements and procedure for voluntary annexation, whereby property owners may voluntarily request a municipality to include their property within the corporate limits of that municipality. Besides various procedural requirements, Section 171.044, F.S., sets forth the following substantive requirements for voluntary annexations: 1) the proposed annexation area must be "contiguous" to the municipality; 2) the proposed annexation area must be "reasonably compact"; and 3) the annexation must not create any "enclaves."

It is the opinion of city staff that the procedural and substantive requirements for voluntary annexation described in Section 171.044, F.S., have been met as follows: First, the annexation area is "contiguous" to the city limits because a substantial part of a boundary of the annexation area is coterminous with a part of the city boundary, and

is touching or adjoining the city limits in a reasonably substantial sense. Second, the annexation area is "reasonably compact" because it is a reasonable concentration of property in a single area and does not create any enclaves, pockets, or finger areas in serpentine patterns. This annexation would not result in a pattern of land that is winding or turning, and would not create any small isolated unincorporated area that is left in a sea of incorporated property when viewed in relationship to the overall scope and configuration of the annexation area and surrounding municipal property. Third, this annexation would not create any "enclaves" because the annexation would not result in any unincorporated property that is either enclosed and bound on all sides by the city limits; or enclosed within and bounded by the city limits and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the city.

Therefore, and in light of the general purpose of municipal incorporation and the fact that a property owner has voluntarily requested to be annexed into the City of Gainesville, city staff recommends adoption of this voluntary annexation ordinance.

The City Commission must decide, based on the map of the annexation area, the opinion and testimony of city staff, and other competent substantial evidence included in the record, whether the proposed annexation meets the essential requirements of the applicable state annexation law as described herein.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings and will become effective immediately upon adoption.

RECOMMENDATION *The City Commission adopt the proposed ordinance.*

Legislative History

6/6/19 City Commission Approved as Recommended

[181064A_East University Avenue Property Voluntary Annexation_20190606.pdf](#)

[181064B_East Univ Ave Annex Map_20190606.pdf](#)

[181064A_draft ordinance_20190801.pdf](#)

[181064B_East Lake Forest Voluntary Annexation USR_20190801](#)

[181064C County Notice_20190801](#)

[181064D_EastLakeForest_Staff Presentation_20190801](#)

GENERAL PUBLIC COMMENT - For items not on the agenda, limited to 3 minutes per citizen and not to exceed 30 minutes total

COMMISSION COMMENT

10:00pm or earlier - Adjourn - If later than 10:00pm, the Commission may waive the rules to extend the meeting or may schedule a date/time to continue the meeting