



CITY OF PORT WENTWORTH

CITY COUNCIL

MARCH 28, 2019

Council Meeting Room

Regular Meeting

6:30 PM

305 SOUTH COASTAL HIGHWAY
PORT WENTWORTH, GA 31407

1. CALL MEETING TO ORDER

Mayor Gary Norton called the meeting to order.

2. PRAYER AND PLEDGE OF ALLEGIANCE

Council Member Bill Herrin led in Prayer and Mayor Gary Norton led in the Pledge of Allegiance.

3. ROLL CALL - CLERK OF COUNCIL

Attendee Name	Title	Status	Arrived
Gary Norton	Mayor	Present	
Debbie Johnson	Mayor Pro Tem	Present	
Shari Dyal	Council Member	Present	
Mark Stephens	Council Member	Present	
Bill Herrin	Council Member	Present	
Thomas Barbee	Council Member	Present	
Linda Smith	Council Member	Present	
Phil Jones	City Administrator	Present	
James L. Coursey, Jr.	City Attorney	Present	
Shanta Scarboro	Clerk of Council	Present	
Brian Harvey	Director of Development Services	Present	
Tiffany Lancaster	Director of Leisure Services	Present	
Lee Sherrod	Major of Police Department	Present	
Lance Moore	Chief of Fire Operations	Present	
Chris Lee	Planning Commissioner	Present	
Trent Long	City Engineer	Present	
Jim Vaughn	City Engineer	Present	

4. APPROVAL OF AGENDA

Council Member Shari Dyal made a motion to approve the agenda with the following additions:

1. Under **New Business** remove Item # 12A. Subdivision Application submitted by Michael Hussey for a Preliminary Plat of a Major Subdivision for the purpose of Single Family Townhomes;
2. Under **New Business** add Item # 12B. Discussion of Future Meeting Times; and
3. Under **Executive Session** add Item # 14A. Personnel Matter.

Seconded by Council Member Thomas Barbee.

Voting results:

Mayor Pro Tem, Debbie Johnson, Yes/Aye
Council Member Linda Smith, No/Nay
Council Member Shari Dyal, Yes/Aye

Council Member Mark Stephens, Yes/Aye
Council Member Bill Herrin, Yes/Aye
Council Member Thomas Barbee, Yes/Aye

5. RECOGNITION OF SPECIAL GUESTS

There were none to report.

6. ELECTIONS & APPOINTMENTS

There were none report.

7. ADOPTION OF MINUTES

A. City Council - Regular Meeting - Feb 28, 2019 6:30 PM

Council Member Shari Dyal requested that the letter regarding the Form of Government of the City of Port Wentworth as presented by the Office of Legislative Counsel Atlanta, Georgia, signed by Julius B. Tolbert, Deputy be added to the February 28, 2019 minutes.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Bill Herrin, Council Member
SECONDER:	Shari Dyal, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

8. COMMUNICATIONS & PETITIONS

There were none to report.

9. COMMITTEE REPORTS

A. Committee Reports

Council Member Linda Smith made a motion to dispense with the reading of the committee reports and make them part of the minutes. Seconded by Council Member Mark Stephens. Vote was unanimous.

Council Member Linda Smith went on to:

1. Thank Brian Harvey, Director of Development Services, and his department for covering 330 inspections for the month of February.

2. Congratulate Tiffany Lancaster, Director of Leisure Services, and her department for erecting the new Tommy Thomas Pavilion signs on the pavilion and message board located off Cantyre Street.

3. Request that the fountain on South Coastal Highway be cleaned up before Stand Up For America Day.

4. Acknowledge Chris Lee, Project Manager for ClearWater Solutions, LLC and Jimmy Ford, Public Services Superintendent for a job well done concerning a backflow issue in the downtown area.

5. Inquire as to the progress of the City of Port Wentworth display inside the Visitors Center off I-95. Trisha Growe, President/CEO of the Port Wentworth Chamber of Commerce was not present to elaborate on the matter. However, City Administrator Phil Jones commented that due to a change in the former process which involved approval from the local Development Authority, to all changes being presented to the Department of Transportation (DOT) for approval. Because of this, the process had to be re-started.

6. Lastly, Council Member Smith inquired about the status of the Houston Museum due to a substantial amount of money being spent to install two (2) restrooms. Tiffany Lancaster

was present to state that monies were budgeted this fiscal year for painting, but due to some exterior repairs that need to be completed first the paint job is on hold.

Questions Regarding Houston Museum

Q. Council Member Linda Smith asked if there are any events scheduled for the museum?
A. Tiffany Lancaster stated that the goal is to be able to rent the facility out to the general public for various events but until several issues are addressed the museum is not rentable.

Q. Mayor Pro Tem Debbie Johnson asked who holds the keys to Houston and why wasn't the facility listed as a rental?

A. Tiffany Lancaster stated that the keys to Houston were handed over to her on last year during the bathroom renovation process and that again the facility is currently not listed as a rentable facility due to several issues that need to be cleared up first. Also, the issue of the lack of parking and no running water needs to be tackled.

Q. Mayor Norton asked if the museum housed mold.

A. Tiffany Lancaster stated that there is no sign of any mold damage.

Comments Regarding Houston Museum

Council Member Thomas Barbee suggested having a workshop on this matter to discuss further.

Mayor Pro Tem Debbie Johnson agreed with Councilman Barbee and also suggested scheduling a time for Council to take a tour of the building.

Phil Jones, City Administrator, stated that he and Mrs. Lancaster will meet to create a punch list. Once this has been done Council will be updated accordingly.

Council Member Bill Herrin made a comment regarding the parking at the museum and that a survey should have been completed to be certain the City was not infringing upon any graves due to be so close to the church.

Council Member Linda Smith made final comments that the City really needs to focus on this project to get the museum up and running properly to preserve it as a historical marker.

Letter regarding the Form of Government of the City of Port Wentworth as presented by the Office of Legislative Counsel Atlanta, Georgia, signed by Julius B. Tolbert, Deputy

Council Member Thomas Barbee stated that a copy of the letter regarding the Form of Government of the City of Port Wentworth as presented by the Office of Legislative Counsel Atlanta, Georgia, signed by Julius B. Tolbert, Deputy has been placed on the entry table for those who would like a copy of the letter to read it for themselves and that the letter will be added to the previous months minutes.

Thank you to Mr. Lee

Council Member Mark Stephens thanked Mr. Lee for allowing him to post the autism signs in the Lake Shore neighborhood.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Linda Smith, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

10. CONSENT AGENDA

Council Member Linda Smith inquired as to whether or not there will be a Gospel Act performing for Stand Up For America Day (SUFAD) and if so, what is the name of the group, cost to perform, time of performance and if there contract needed to be added to the agenda?

Clerk of Council, Shanta Scarboro, responded by stating yes and that the name of the band is 'Bought By Blood' with a cost of \$1,560.00. The time of performance is believed to be 2:00pm - 4:00pm but could be confirmed at a later date. Lastly, due to there being no contract requiring a signature there was nothing to add to the agenda.

Council Member Linda Smith also stated that she had a conversation with City Administrator, Phil Jones, regarding the cost for Royal Restrooms and its overall expense but understands that they are very nice.

Mayor Pro Tem Debbie Johnson stated that Royal Restrooms is a step up from the porta johns used in the past and would very much like to stick to using the Royal Restrooms.

City Attorney, James L. Coursey, Jr., pointed out Item #D. Falcon Fireworks and stated that in reviewing the contract a clause which states that in the event the fireworks company is unable to proceed with the show the liquidated damages procedures will allow them to collect 100% of the contract price. Mr. Coursey inquired as to whether or not that was true in the past and if this were acceptable to Council? He went on the further state that it would seem that if the company did not unwrap the fireworks and could not shoot them in inclement weather it is a little stretched to still pay 100% of the contract when they would in fact be taking back there own fireworks to their shop.

Mayor Norton asked Clerk of Council, Shanta Scarboro, if Falcon Fireworks was paid in full the year the storm came through and Stand Up For America Day was canceled?

Mrs. Scarboro replied, yes sir since it was stated in the contract.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Bill Herrin, Council Member
SECONDER:	Thomas Barbee, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

- A. Agreement with M. Reed Kennedy DBA Brickhouse Live for the 2019 Stand Up For America Day Festival
- B. Agreement with Music Garden for "City Heat" Band to perform at the 2019 Stand Up For America Day Festival
- C. Agreement with DJ Turbo Music to provide services for the 2019 Stand Up For America Day Festival
- D. Agreement with Falcon Fireworks to provide services for the 2019 Stand Up For America Day Festival
- E. Agreement with Royal Restrooms to provide services for the 2019 Stand Up For America Day Festival

11. UNFINISHED BUSINESS

There were none to report.

12. NEW BUSINESS

- A. Subdivision Application submitted by Michael Hussey, Sundial Land Surveying, PC., on behalf of Coopers Hills, LLC., for PIN #: 7-0976-02-025 (Newport Boulevard) located in a P-RIP (Planned Residential Institutional) Zoning District for a Preliminary Plat of a Major Subdivision (Newport Square Townhomes) for the purpose of Single-Family Townhomes

Council Member Shari Dyal made a motion to withdraw the Subdivision Application submitted by Michael Hussey for a Preliminary Plat of a Major Subdivision for the purpose

of Single Family Townhomes during the Approval of the Agenda. Seconded by Council Member Thomas Barbee. Vote was unanimous.

RESULT:	WITHDRAWN [UNANIMOUS]
MOVER:	Shari Dyal, Council Member
SECONDER:	Thomas Barbee, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

- B. Termination of City Attorney Retainer Agreement By and Between the City of Port Wentworth and Mahoney & Cole, P.C.

Council Member Thomas Barbee made a motion to reconvene the Regular City Council Meeting. Seconded by Council Member Shari Dyal. Vote was unanimous.

After convening the Regular City Council Meeting at the end of Executive Session, Council Member Thomas Barbee made a motion in open meeting to terminate the contract of City Attorney James L. Coursey, Jr. with Mahoney and Cole, Attorney At Law. This motion was made twice by Councilman Barbee, before stating "Mayor Norton if you do not comply with this motion I will have you removed from your seat and replaced by Mayor Pro Tem, Debbie Johnson."

Mayor Norton asked the City Attorney for his opinion. Mr. Coursey responded by stating "my opinion is we're still back at square one with regard to who has the power."

Mayor Norton replied to Mr. Coursey's opinion by stating that "City Ordinance says that the City Administrator and the Mayor has power to terminate, not the Council. The charter says that the Mayor and Council does, but the ordinances are laws."

Council Member Thomas Barbee stated "your honor, our Charter has been on file since 1957, that's 62 years to date of the year 2019. There has been no ratified change to our Charter. Nevertheless, no City has the power to adopt changes to there Form of Government unless it has been ratified by the State of Georgia. To this date, to this time, that I am speaking under the sound of my voice there has not been one ratified document from the City of Port Wentworth to change our Form of Government; and our Form of Government from the State of Georgia Legislative is a Weak Mayor, that is it. Jimmy Coursey's opinion was wrong and that's the law."

Phil Jones, City Administrator, responded to Councilman Barbee's statement by saying that "I understand your argument, however enclosed in that are the parameters for which a City government works under. It says that you have the power to pass laws and ordinances and that is what exists in your ordinances. The board did it; it wasn't done by anyone else. The board passed laws and ordinances and those ordinances gave certain authorities to certain people, done by Council. Not done by the Mayor or by one individual, but by Council as a whole. And if you went on the premise that if it's not in your Charter then all of the ordinances that you've passed become void because they are not in your Charter; and so now your City government has no ordinances to follow. It's illogical."

City Attorney, James L. Coursey, Jr. made a few comments related to the matter by stating "so what we have here is a difference of opinion between two ordinances. You are faithfully saying that Mr. Tolbert is correct and I'm saying that I believe that he is wrong. But what should be happening here is that if you would look at the City's Charter and in subsequent order by ordinance there are tremendous problems and I've been talking about it for a year now, that someone needs to start revamping these provisions top to bottom. I have found inconsistencies between the Charter and ordinances. I've found inconsistencies between ordinances and other ordinances. I've found inconsistencies between Charter provisions and other Charter provisions.

There are a numerous emphasis's within the Charter and ordinances where State law has superseded it in provisions that have even been repealed. But it still is a mess; for instance. I was looking today, Section 4 of the Charter regarding Election of Mayor and Council which says that all elections for Mayor and Council had to be At-Large elections. As far as I know we have districts in this City and I don't know when it was changed and how it was changed because I can't find it. So, if you're going to use Mr. Tolbert's analysis that the Charter at all times is right, and there are no inconsistencies then we've got four Council Members sitting here in front of me that may have been improperly elected. So, do you want to go there? It has problems, it has problems.

So, you've got a difference of opinion between one lawyer and another lawyer and it happens everyday. I've practiced in Georgia, Florida, South Carolina, Virginia and other places in Federal Court and every court room that I walk into there are two (2) lawyers there. One has an opinion, the other one has another opinion and they are looking at the same piece of paper and that's what Judges are for. So we basically have, in my estimation, three (3) choices: 1. you can direct me to file a declaratory judgment action in Superior Court and let a Superior Court Judge tell us what to do, that's possible; it will be expensive, but that's possible. 2. under the 'Home Rule Act' it gives this Council an opportunity to, if you choose to do so, make adjustments to your own Charter or 3. if the population is over 5,000 if a petition was started and you get 20% of the registered voters who were registered at the last election to sign a petition to change the Charter in some way, shape or form if they did it, this Council would be bound by it. So we have options, but my point is that there are inconsistencies that need to be resolved."

Mayor Norton summed it all up by stating "that we have two different opinions here. I think we should get a GMA lawyer to look at both sides of this before we make a decision we have to live with for a long time."

Council Member Thomas Barbee made a motion to "hire our own legal representation for City Council to take a look at this. To have a person from a 3rd party, outside independent lawyer to come in to take a look at it. Nobody that's connected to Port Wentworth and definitely not Fred Williams."

Mayor Norton asked Councilman Barbee if he was in agreement to seeking a GMA lawyer. Mr. Barbee gave no response. Mayor Pro Tem Debbie Johnson stated that she thinks they should entertain both options.

Council Member Shari Dyal made a motion to delay the Termination of the Contract By and Between the City of Port Wentworth and Mahoney and Cole, P.C. but have an independent lawyer look into the matter of the Form of Government for the City of Port Wentworth. Seconded by Council Member Mark Stephens. Vote was unanimous.

RESULT:	DELAYED [UNANIMOUS]
MOVER:	Shari Dyal, Council Member
SECONDER:	Mark Stephens, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

13. RESOLUTIONS/ORDINANCES/PROCLAMATIONS

- A. Ordinance No. 19-01, Budget Adjustment for FY19, Public Safety Department, for a Vehicle Replacement, First Reading

Major Lee Sherrod of the Port Wentworth Police Department was present to answer any questions related to this matter.

Major Sherrod stated that on January 29, 2019 a police officer and his K9 were involved in a vehicle pursuit resulting in total loss of the vehicle. However, both the officer and K9 are doing well. Due to the incident, the insurance company is willing to pay back

\$15,000.00 of the damages and the auctioning of other police vehicles will assist with the other costs associated.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Herrin, Council Member
SECONDER:	Debbie Johnson, Mayor Pro Tem
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

- B. Ordinance No. 19-01, Budget Adjustment for FY19, Public Safety Department, for a Vehicle Replacement, Second Reading

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Herrin, Council Member
SECONDER:	Mark Stephens, Council Member
AYES:	Johnson, Smith, Dyal, Stephens, Herrin, Barbee

- C. Discussion of Future Regular City Council Meeting Times

Council Member Shari Dyal shared her concern with Mayor and Council regarding the future meeting times for the Regular City Council Meetings due to the high volume traffic on Highway 21 and potential for other delays that would prevent Council from making a 6:30 p.m. meeting time. The concern will become even greater once the meetings are moved to the new City Hall which is on the other side of I95.

Mayor Gary Norton suggested having a workshop on this matter to discuss further.

Council Member Shari Dyal was in agreement with the Mayor that a workshop is needed for further discussion.

City Administrator, Phil Jones, also stated that based on his conversations with Ed Hutchinson, Renasant Bank Division President-Southeast Georgia, they are on track with the move and the May 6, 2019 closing date for the acquisition of the bank is looking good. Mr. Jones went on to further state that he has notified Georgia Municipal Association (GMA) of the possible closing date.

Mayor Norton shared in the meeting that the City of Port Wentworth has a great Police and Fire Department and thanked them for their service.

14. EXECUTIVE SESSION

Prior to the motion being made to adjourn into Executive Session, City Attorney James L. Coursey, Jr. stated the following:

"Georgia law says that a meeting may be closed to meet with legal counsel regarding settlement of pending litigation, 50-14-2 in the Official Code of Georgia. The meeting may not be closed to discuss, advise or give consultation on whether to close that meeting in the first instance. It must be done in open meeting, 50-14-2. No one has consulted the City Attorney on whether to close a meeting to discuss settlement of pending litigation against the City. There's been no specifics to that topic made whatsoever on this agenda. I'm admonishing this Council right now that the Attorney-Client relationship has not been waived regarding any settlement of pending litigation; and I'm referring to section 50-14-2. So I admonish each and every one of you, if you close that door and you discuss anything other than the settlement of pending litigation directly, indirectly or under any guidance of subterfuge, this may be an illegal meeting under the Open Meetings Act.

I will not step into that closed room with the party plaintiff who has sued the City and who does not have a lawyer present. I'm not going to touch anything upon that case directly or indirectly

and you should not either. If I were to do so I would be communicating with a represented person and I would subject myself to possible discipline by the court and the Georgia bar; and I'm not going to do so. Let me also relate to you that no settlement discussions in Ms. Johnson's case have been related to me and therefore, that topic is off the table. GIRMA is representing the City and several individuals in this matter. My recommendation is that Mayor and Council not go into Executive Session for that reason, if that is what is going to be discussed. Now I've heard the topic being said is a "Personnel Matter" is going to be discussed. Once again, no specifics on that agenda. Therefore, notice has not been properly made to the public and it is my opinion that an Executive Session would be improper at this point.

Official Code of Georgia 50-14-3 makes it very clear that Executive Session should be conducted for limited purposes. Basically there are three (3). One of them is to authorize settlement of pending litigation, that's off the table. Another is real property issues. Nothing of the kind is there. Therefore, the only matter is whether there are issues involving discipline or termination of a public officer, it cannot happen behind closed doors; it must happen in open meeting. Since it is my understanding that evidence in the form of some bogus and fraudulent, anonymous letter may be presented in that meeting it must be in open meeting. You cannot go behind closed doors. To do so would be another violation of the Open Meetings Act for the State of Georgia. Mr. Mayor, based upon these comments I recommend that you move on to the next appropriately notice agenda item."

Council Member Thomas Barbee stated that "we have three (3) situations that we can go into Executive Session; for personnel, litigation and property acquisition. The proper ruling has been given as to what Executive Session is for. If Mr. Coursey does not want to be in Executive Session he doesn't have to be in there. And since he brought up the situation about a case as far as litigation, I recommend that Ms. Johnson does not be in there either. So both of them can just stay in here."

Mayor Norton stated that neither can Mr. Bill Herrin attend Executive Session. Council Member Thomas Barbee went on to elaborate that due to Mr. Herrin being listed on the paperwork.

Council Member Linda Smith stated that "Executive Session is on the agenda, it doesn't have anything beside it, so this has not been properly advertised. I believe if we go in there, I think we should heed to that from now on. If it says Executive Session and it's coming up at the agenda time to add it, that's not proper notice. The people need proper notice. This has not been advertised, this would be an illegal Executive Session as far as Linda Smith is concerned."

Mayor Pro Tem Debbie Johnson stated "your honor, in the past I've been on Council before and we have added Executive Session and it's not been added to the documentation at that time; we go into Executive Session for litigation, and so on. This is not something that has just been added, we've done it before."

Council Member Shari Dyal commented that "if we cannot added something to Executive Session when your going through the agenda, how can you add other items to the agenda to speak about? Because it's not been made public either."

Mayor Gary Norton summed up the discussion by stating, "we are going to have Executive Session. Bill you can't go in, Debbie you can't go in, Jimmy you can't go in, but I'm going to tell you'll something. If you're going to talk about something that we can't talk about in there I'm going to cut it short and we're coming back in here. Everybody understand that?"

Phil Jones, City Administrator, stated that everyone will have to sign the affidavit.

Council Member Thomas Barbee made a motion to adjourn into Executive Session. Seconded by Council Member Shari Dyal.

Voting results:

Mayor Pro Tem, Debbie Johnson, Yes/Aye
Council Member Linda Smith, No/Nay
Council Member Shari Dyal, Yes/Aye

Council Member Mark Stephens, Yes/Aye
Council Member Bill Herrin, Yes/Aye
Council Member Thomas Barbee, Yes/Aye

Council Member Thomas Barbee made a motion to reconvene the Regular City Council Meeting. Seconded by Council Member Shari Dyal. Vote was unanimous.

15. PUBLIC COMMENTS - REGISTERED SPEAKERS

Jill Litten 8 Tiller Way, addressed Mayor and Council to voice her concern over placing additional parking near the front entrance of the Newport Subdivision. Mrs. Litten proposes that the new exit be placed elsewhere to allow for a better flow, perhaps onto Highway 30 or build another entrance/exit somewhere else. Adding more town homes is simply adding to the already growing traffic concerns.

John Holland, 3 Galley Lane, expressed that although great improvements are being made to the Newport subdivision he and other residents are concerned about the entrance to the community and wanted to know if anything could be done to alleviate this issue.

Doug Tomlinson, 222 Phillips Avenue, stated to Mayor and Council that "Port Wentworth needs to get it together and become one City; no private agendas."

Julius Robinson, 225 Grant Road, thanked the Mayor and Port Wentworth Public Safety Department for handling certain issues for which he had a concern.

Jud Bowers, 413 Cantyre Street, approached Council to state that during his time as a Council Member he was under the impression that the Form of Government was based on if a City had a City Administrator there is a Strong Mayor Form of Government and if a City had a City Manager there is a Weak Mayor Form of Government. Mr. Bowers also went on to inquire as to why Council wanted to fire the City Attorney?

16. ADJOURNMENT

There being no further discussion Council Member Bill Herrin made a motion to adjourn. Seconded by Council Member Linda Smith. Vote was unanimous.



Mayor Gary Norton

The foregoing minutes are true and correct and approved by me on this 25th day of April, 2019.

ATTEST:



Shanta M. Scarboro, Clerk of Council