

Palmetto City Commission
October 20, 2008 4:00 p.m.

Elected Officials Present:

Larry Bustle, Mayor
Tambra Varnadore, Vice Mayor
Eric Ball, Commissioner (departed at 5:10 pm)
Tamara Cornwell, Commissioner
Mary Lancaster, Commissioner
Brian Williams, Commissioner

Staff Present:

James R. Freeman, City Clerk
Michele Hall, City Attorney
Chris Lukowiak, Public Works Director
Chief Garry Lowe
Tanya Lukowiak, CRA Executive Director
Bob Schmitt, City Planner
Bill Stollo, Code Enforcement Director
Diane Ponder, Deputy Clerk-Administration

Mayor Bustle called the meeting to order at 4:05 pm. A moment of silence was observed for our military men and women, followed by the Pledge of Allegiance.

1. AGENDA APPROVAL

MOTION: Mrs. Lancaster moved, Ms. Cornwell seconded and motion carried 5-0 to approve the October 20, 2008 4:00 pm agenda.

Commission agreed to move item #3 forward due to the delay of the arrival of Attorney Wendy Smith.

2. DISCUSSION: PROPOSED UNDER 21 ORDINANCE

Attorney Hall informed Commission she had mirrored the county ordinance as closely as possible to allow for enforcement by the Sheriff, if necessary. She stated the proposed ordinance amended only division 4.4 of the City's existing ordinance, and opined the existing ordinance should be completely updated, due mainly to inconsistencies and undefined terms.

Attorney Hall confirmed the ordinance allows a minor child to accompany a parent into a bar. Also, the current ordinance makes the owner responsible for an underage individual, while the proposed ordinance allows an underage individual to be ticketed if they are consuming alcohol.

Ms. Varnadore stated her understanding was that the Commission did not want to adopt the county ordinance; they wanted law that would prevent the entry of individuals under the age of 21 from entering establishments and consuming alcohol. The other Commissioners did not dispute her statement.

Ms. Cornwell requested that the revised ordinance contain language that clearly identifies penalties for non-compliance. Chief Lowe requested that the ordinance contain language referring to F.S. Ch. 901. Mrs. Lancaster requested that Attorney Hall research to determine if a parent can be prevented from taking a minor child into a bar. Mr. Ball also brought up the potential issue of children in private social clubs where alcohol is served. Mr. Williams requested that the ordinance contain a method for Code Enforcement to audit the books of establishments so it can be determined if food sales meet the current 51% of gross sales. Mr. Williams further requested a report on the businesses in the City that serve food and alcohol on Sundays,

showing the percentage of food that is being sold. Code Enforcement Director Bill Strollo stated that while he has not performed an audit, there are two cases pending before the Code Enforcement Board for Sunday alcohol sales.

Commission directed Attorney Hall to amend the City's existing ordinance, showing it in track changes. Mayor Bustle also stated that the language of ordinances should be enforceable; if not, the ordinances should be updated.

3. DISCUSSION: BACKGROUND CHECKS

Attorney Wendy Smith confirmed she had reviewed the relationship of the Jessica Lunsford Act to the City's issue and concluded, in part, that if the City is going to require Level 2 screening under the Act, then: 1) The City must determine if there are contractual relationships with the School Board, and 2) Do City of Palmetto employees have access to school grounds or do they have direct contact with students. Attorney Hall inquired if the City determines that the Act does not apply, does the City have the right to make the decision that screenings are a matter of critical safety for certain positions and Level 2 screenings will be implemented, even though they are not required by the Act. Attorney Smith discussed the City's ability to make the decision to implement Level 2 screenings, and if the Act does apply, the City is complying as mandated by law. Attorney Hall opined that she will determine if there are current contracts with the School Board. Attorney Smith stated the City will still have to determine if, by virtue of their employment, City employees will go onto school grounds or have access to students, or do they have access to or control of school funds.

Ms. Cornwell stated areas of concerns are City utilities to schools and interlocal agreements with the School Board for use of any park. Mr. Lukowiak stated the City's utility obligations end at the meter, or property line. Mr. Williams commented on City easements that may cross school property. Mr. Lukowiak also confirmed that the City does not maintain Lincoln Park.

In response to Mrs. Lancaster's inquiry, Chief Lowe stated he is not aware of any reported incident involving a City employee and a student on any school property. Attorney Smith reminded Commission that the Act only allows adverse action against employees who have been convicted of certain types of offenses against minors; it's a narrowly tailored act to prevent direct contact with children, as opposed to occasional or incidental contact.

Attorney Smith stated, from a practical position, if there are a minimal number of employees who fit the criteria of the Act, background screenings are done and the screening is clean, the Act may not apply at all. So, to protect the City from potential liability, Commission should consider some type of background screening; most people outside the Act only perform Level 1 screenings.

Attorneys Smith and Hall agreed with Mr. Williams' opinion that the City has the ability to perform Level 2 screening, if so desired. He suggested that the City go to Level 2 in certain employee areas such as Parks & Rec and Water & Sewer, because of the possible exposure to children. Attorney Smith opined that rather than focusing on those two departments, because suits she has seen for negligent intention by employers did not all involved children, maybe the City should look instead to the employees who could do most harm to a third party, not focus strictly on children. She opined a definition for a safety sensitive position should be developed. While Attorney Smith did not advocate Level 1 or Level 2 screening, she opined that should the City perform Level 1 screenings she did not think the City could be found negligent. Commission discussed the difference between the two screening levels.

Mrs. Lancaster inquired if there are any procedures in place for what would happen if a prior conviction was found during a screening. Attorney Hall stated a policy and procedure would have to be developed before any screening is implemented, because that is what would make the screening defensible; Attorney Smith concurred.

Attorney Smith discussed the possibilities that could affect the City should retroactive screenings be performed, as well as what could occur if screenings are not performed. Attorney Hall also discussed Florida being an at-will state; however, there are many exceptions to at-will.

Attorney Smith reviewed the specific guidelines the EEOC has developed for the situation the City may face in taking adverse action as the result of a screening, and if discrimination is charged, as follows: 1) How serious was the conviction? 2) How long ago did it happen? and 3) Does it bear any relationship to the job the employee would be performing for the City. She suggested these guidelines would be a good starting point for the City's policy.

Ms. Cornwell stated that she would like to look at a three-tiered system for screening, based on the longevity of the employee. She also stated that she felt self-reporting within 48 hours of an arrest must be included in any policy developed by the City.

Ms. Varnadore inquired if there is a time limit for verification of information contained on an application. Attorney Smith discussed the normal procedure for verification of application information. Ms. Varnadore also inquired what Attorney Smith's recommendation would be regarding the retroactive background screening for all current employees. Attorney Smith again discussed the possibilities of what could occur if the City did or did not elect to perform retroactive background screening, i.e. once probation has passed, employees have a greater expectation of job right properties in the public sector. The City should weigh all theoretical possibilities, look at positions that are safety sensitive and limit the screening to a specific time period, both actions to decrease the risk of an employee law suit.

Attorney Hall inquired if Commission wants to perform retroactive background checks on all employees and at what level. Discussion resulted in a majority of the Commission agreeing to at least a Level 1 retroactive background screening for all employees.

Mr. Williams stated that Parks & Rec employees, meter readers, their supervisors, department heads, and elected officials should be included in a possible Level 2 screening, due to possible public contact. Attorney Hall opined the screening should be limited to safety. Mr. Lukowiak stated that all Public Works employees should be screened, given that many employees in addition to those mentioned have public contact.

Ms. Varnadore referred to a draft policy that was distributed to Commission in the past, stating it appeared to be a very good starting point, and suggested that it be looked at again.


Mr. Williams inquired if a reaffirmation of an application is possible. Attorney Smith stated the employee should be able to see the application before reaffirming original submitted information. She opined she would rather see the City require all employees to submit a new application, or update the original application, which is within the Commission's purview. Attorney Smith further opined it may be more reasonable to require personal information.

Mrs. Lancaster discussed the negative message retroactive screening may send to the employees. Attorney Smith concurred it could be a negative employee relations issue.

The topic will be returned to the November 3, 2008 workshop agenda.

Meeting adjourned at 6:05 pm.

Minutes approved: November 3, 2008



James R. Freeman
City Clerk