

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA**

**DISCOUNT SLEEP OF OCALA, LLC d/b/a
MATTRESS WAREHOUSE, individually,
and as a Representative of a Class of all
similarly situated others, and DALE W.
BIRCH, individually and as a
Representative of a Class of all similarly
situated others,**

Case No.: 2014 CA 000426

Plaintiffs,

v.

**CITY OF OCALA, FLORIDA, a political
subdivision of the State of Florida,**

Defendant.

AMENDED COMPLAINT

Plaintiffs, Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse, individually, and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually and as a Class Representative of all similarly situated others (collectively the "Class Representatives"), sue Defendant, City of Ocala, Florida, a political subdivision of the State of Florida (the "City"), and allege as follows:

**Declaratory Judgment Class Action to
Declare "Fire Fee" Invalid and Establish Common Fund**

1. The Class Representatives file this suit against the City and allege a declaratory judgment action with supplemental relief to establish a common fund, comprised of all the unlawful taxes paid by the Class Representatives and each Class Member to the fullest extent allowed by law.

Class Representative Allegations

2. Each Class Representative is a member of a class defined as those who previously paid or are currently paying the City's Emergency Fire Service Availability Fee (the "EFSAF") or Emergency Fire Service User Fee (the "EFSUF").

3. In 2006, the City found that its ad valorem tax revenue was insufficient to cover the costs of providing fire protection services. See City of Ocala Ordinance 5554, attached hereto as Exhibit "A," at § 1; Ocala City Council Work Session Minutes (May 23, 2006), attached hereto as Exhibit "B," at 1.

4. On August 9, 2006, the City enacted Ordinance 5554, which established the EFSAF effective January 1, 2007. Under Ordinance 5554, the City was required to review the EFSAF at five (5) year intervals, "for the purpose of determining the appropriate fee for the following five fiscal years required to recover a portion of the projected cost of providing emergency fire services as determined by the city council." See City of Ocala Ordinance 5554, attached hereto as Exhibit "A," at § 1.

5. The City enacted Ordinance 5554, in part, as a means of generating revenue from properties that were exempt from paying ad valorem taxes. See City of Ocala Council Minutes (June 6, 2006), attached hereto as Exhibit “C,” at 14-15.
6. The City implemented the EFSAF on January 1, 2007, rather than October 1, 2006, to “give the citizens an additional three months reprieve before the **tax** is levied.” See Ocala City Council Work Session Minutes (August 9, 2006), attached hereto as Exhibit “D,” at 5 (emphasis added).
7. Rather than raise the ad valorem tax rate, cut the level of services, or make other budget adjustments, the City claimed that imposing the EFSAF would “generate a portion of the budgeted operating costs of providing emergency fire services to the city’s citizens and properties.” See City of Ocala Ordinance 5554, attached hereto as Exhibit “A,” at § 1.
8. On June 12, 2007, the City enacted Ordinance 5677, which retitled the EFSAF as the EFSUF and added a claim that the EFSUF was authorized by Section 166.201, Florida Statutes. See City of Ocala Ordinance 5677, attached hereto as Exhibit “E,” at § 1.
9. The City claims it retitled the EFSAF in 2007 “because the fee was never conceived as anything but a user fee and the original name was clearly a scriveners’ error.” See Mem. of City Attorney (March 3, 2011), attached hereto as Exhibit “F,” at 4.
10. On October 6, 2009, the City voted to repeal the EFSUF in its entirety, effective on October 1, 2010. See City of Ocala Ordinance 6015, attached hereto as Exhibit “G,” at § 1.
11. Councilman Charles Ruse, Jr. voted to repeal the EFSUF on October 6, 2009, in part, because “it should be in the ad valorem department.” See Ocala City Council Minutes (October 6, 2009), attached hereto as Exhibit “H,” at 4.
12. On May 4, 2010, the City voted to repeal Ordinance 6015, thereby re-enacting the EFSUF, it previously repealed, without expressly reviving Ordinance 5554. See City of Ocala Ordinance 2010-43, attached hereto as Exhibit “I,” at §§ 1-2.
13. As opposed to the initial EFSAF and repealed EFSUF, the new EFSUF created in 2010 (the initial EFSAF, repealed EFSUF, and new EFSUF created in 2010 are hereinafter collectively referred to as “Fire Fee” or “Fire Fees”) requires the City to annually adopt the EFSUF non-residential rate schedule and residential rate “by resolution for the next Fiscal Year.” See City of Ocala Ordinance 2010-43, attached hereto as Exhibit “I,” at § 2.
14. On October 14, 2011, the City filed a lawsuit against the School Board of Marion County (the “School Board”) to enforce the Fire Fees. See Case No. 42-2011-CA-003112-AXXX-XX Docket attached hereto as Exhibit “J.”
15. In its lawsuit against the School Board, the City contends that its Fire Fees are user fees, rather than special assessments, and alleges that the Fire Fees were properly imposed “pursuant to [the] City’s constitutional home rule authority and pursuant to Section 166.201, Florida Statutes” See Second Amended Complaint, attached hereto as Exhibit “K,” at ¶ 7.
16. The City is not authorized by the Florida Constitution or general law to levy Fire Fees, and the City’s imposition of Fire Fees is contrary to Florida’s established ad valorem taxation methodology. Thus, the Fire Fees are illegal taxes and *void ab initio*.
17. Article VII, Section 1(a) of the Florida Constitution provides that “[n]o tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible

personal property. All other forms of taxation shall be preempted to the state except as provided by general law.” FLA. CONST. art VII, § 1(a).

18. Section 166.021(2)(c), Florida Statutes, is a limit on municipal home rule authority concerning “[a]ny subject expressly preempted to state or county government by the constitution or by general law.” FLA. STAT. § 166.021(2)(c) (2013).

19. Article VII, Section 9(a) of the Florida Constitution provides that “[c]ounties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.” FLA. CONST. art VII, § 9(a).

20. Prior to enacting the UFSAF, the City hired an outside consultant to prepare a Fire Service Fee Study, the objective of which was “to provide a means to recover all or a portion of the costs to provide fire services.” See Ocala City Council Work Session Minutes (May 23, 2006), attached hereto as Exhibit “B,” at 2.

21. On June 21, 2006, as part of the Fire Service Fee Study, the law firm of Lewis, Longman & Walker, P.A. informed the City that there was “no specific grant of statutory authority to the City to impose a fee for fire protection services[,]” and that the UFSAF “can be challenged with a claim it is actually a special assessment or tax” See City of Ocala Fire Service Fee Study, attached hereto as Exhibit “L,” at 30, 32.

22. The City did not follow the statutory procedure for enacting a special assessment or a tax.

23. On July 14, 2006, the City Attorney reported to City Manager, Paul Nugent, that he had performed independent research and agreed with the Lewis, Longman & Walker, P.A. legal opinion that there was no specific grant of statutory authority to the City to impose the UFSAF. The City Attorney also reported his concern that the mandatory nature of the UFSAF “speaks against characterizing [it] as a user fee.” See Mem. of City Attorney (July 14, 2006), attached hereto as Exhibit “M,” at 2.

24. On November 30, 2010, the City Attorney reported to City Manager, Rick Horst, that “no appellate or attorney general opinions exist” that suggest the City’s Fire Fees are valid. In fact, the City Attorney “want[ed] to make clear that any challenge to the [Fire Fees] would present a case of first impression in Florida.” To address “the ambiguity in the law,” the City Attorney recommended the City “seek an order for a declaratory decree in Circuit Court.” See Mem. of City Attorney (November 30, 2010), attached hereto as Exhibit “N,” at 3.

25. The City provides fire protection services to the general public.

26. The City uses ad valorem tax revenue to partially cover the costs of providing fire protection services to the general public.

27. The City charged, and continues to charge, Fire Fees to partially cover the costs of providing fire protection services to the general public.

28. The City’s fire protection services are part of the general police-power services it provides to the general public and pays for with ad valorem tax revenue.

29. The City deposited, and continues to deposit, all revenue generated by the Fire Fees into its general fund.

30. The City does not pledge its Fire Fee revenue, or otherwise tie the Fire Fees, to any specific long-term financing for municipal improvements. Rather, the City charges Fire Fees on a monthly basis simply because “the cash flow issue could be managed better on a monthly basis.” See Ocala City Council Work Session Minutes (May 23, 2006), attached hereto as Exhibit “B,” at 4.
31. The City has used, and continues to use, Fire Fee revenue to replace a portion of the City’s general fund that would have otherwise been used to cover the costs of providing fire protection services to the general public. According to City Council President Kyle A. Kay, the additional revenue generated by charging Fire Fees “freed up other revenues to bolster other parts of the budget” See Ocala City Council Minutes (October 6, 2009), attached hereto as Exhibit “H,” at 5.
32. The City charged, and continues to charge, a monthly Fire Fee to each of its utility customers as part of each customer’s utility bill. See City of Ocala Ordinance 2010-43, attached hereto as Exhibit “I,” at § 2.
33. Each monthly Fire Fee is a new and unique charge, and nonpayment of any monthly Fire Fee will subject a City utility customer to severe penalties.
34. The City contends that its Fire Fees apply “to all property owners within [the] City and [are] intended to supplement fire services to the citizens, businesses and governmental entities requiring fire services within the city limits of [the] City.” See Second Amended Complaint, attached hereto as Exhibit “K,” at ¶ 6.
35. The City has not charged, and does not charge, Fire Fees to all property owners within its municipal boundaries. Rather, the City charged, and continues to charge, Fire Fees only to its utility customers.
36. The City has not charged, and does not charge, Fire Fees to owners of vacant or undeveloped property within the City’s boundaries or to property owners within the City’s boundaries who cancel their utility service.
37. The general public has used, and can continue to use, the City’s fire protection services regardless of whether or not they are City utility customers.
38. Owners of vacant or undeveloped property within the City’s boundaries and property owners within the City’s boundaries who have cancelled their utility service have used, and can continue to use, the City’s fire protection services without paying Fire Fees.
39. The City provided, and continues to provide, the same type and level of fire protection services to those who pay Fire Fees and to those who do not pay Fire Fees.
40. The City has not provided, and does not provide, new, different, or unique fire protection services to those who pay Fire Fees as compared with those who do not pay Fire Fees.
41. The City has not provided, and does not provide, fire protection services to those who pay Fire Fees in a manner not shared by those who do not pay Fire Fees.
42. The City has not charged, and does not charge, Fire Fees in exchange for using fire protection services. Rather, the City charged, and continues to charge, its utility customers Fire Fees regardless of whether they ever use the City’s fire protection services.

43. The City was aware, prior to enacting any of the Fire Fees, that the Fire Fee revenue would “cover the cost of the City’s routine provision of fire protection services.” See City of Ocala Fire Service Fee Study, attached hereto as Exhibit “L,” at 29.
44. The City’s Fire Fees are a mandatory charge. In fact, prior to enacting any of the Fire Fees, the City Attorney cautioned that “the mandatory nature of the [Fire Fee] speaks against characterizing the charge as a user fee.” See Mem. of City Attorney (July 14, 2006), attached hereto as Exhibit “M,” at 2.
45. The City enforced, and continues to enforce, collection of its Fire Fees “in the same manor [sic] as that used with all other portions of the bill for utility services.” See City of Ocala Ordinance 2010-43, attached hereto as Exhibit “I,” at § 2.
46. The City penalized, and continues to penalize, those who fail to pay their utility bill, including each monthly Fire Fee, in full each month by charging a late fee and, if full payment is still not received, then by terminating all utility service and charging a severance fee. See City of Ocala, CODE OF ORDINANCES, §§ 70-686 attached hereto as Exhibit “O,” 70-687(a) attached hereto as Exhibit “P,” 70-691 attached hereto as Exhibit “Q,” and 70-693(c) attached hereto as Exhibit “R.”
47. The City referred, and continues to refer, utility accounts that remain unpaid for 90 days for collections and adds the collections costs, including attorney’s fees, to the balance owed. See City of Ocala, CODE OF ORDINANCES, § 70-687(b) attached hereto as Exhibit “P.”
48. The City also charged, and continues to charge, a reconnection charge once a delinquent utility bill, including the monthly Fire Fee, is paid in full. See City of Ocala, CODE OF ORDINANCES, § 70-693(a) attached hereto as Exhibit “R.”
49. The City contends that any unpaid monthly Fire Fees “constitute a lien” under its code of ordinances, which “are then subject to foreclosure pursuant to City Ordinance 70-686(e).” See Plaintiff’s Response to Defendant’s Motion to Dismiss Second Amended Complaint With Prejudice and Incorporated Memorandum of Law, attached hereto as Exhibit “S,” at 9.
50. In addition to the risk of foreclosure, anyone who does not pay each monthly Fire Fee risks having the City initiate a lawsuit claiming unjust enrichment because the “City has conferred a benefit on [the delinquent property owner] in the form of emergency fire services[,]” which were “voluntar[ily] accepted and retained” See Second Amended Complaint, attached hereto as Exhibit “K,” at ¶¶ 109-110.
51. If anyone wants to use the City’s utility service, or continue using the City’s utility service without interruption, then they must pay each monthly Fire Fee.
52. The Class Representatives bring this action pursuant to Florida Rule of Civil Procedure 1.220(b)(2), or alternatively, Florida Rule of Civil Procedure 1.220(b)(3), on the Class Representatives’ behalf and on behalf of all similarly situated others.
53. The Class Representatives and each member of the class previously paid or are currently paying Fire Fees for fire protection services as City utility customers.
54. The relief sought is appropriate to the Class as a whole, as each member was subject to and did pay the Fire Fee.
55. Pursuant to Florida Rule of Civil Procedure 1.220, the Class Representatives satisfy the following:

A. **Numerosity.** While the exact number of Class Members can be determined only by appropriate discovery from the City, on information and belief, there are approximately 50,000 utility customers upon whom the City imposed over \$49,000,000.00 in Fire Fees;

B. **Commonality.** There are common questions of law and fact to the claims of each member of the Class and the Class Representatives, which include, but are not limited to, whether the Fire Fees are unlawful and unconstitutional;

C. **Typicality.** The Class Representatives' claims are typical of the claims of each member of the Class. Each member of the Class was previously charged, or is currently being charged, and previously paid, or is currently paying, the Fire Fee as a City utility customer. Each Class Member is entitled to a refund of unlawful Fire Fees to the fullest extent allowed by law; and

D. **Adequacy.** The Class Representatives will fairly and adequately protect and represent the interests of each member of the Class, the Class Representatives' claims are identical to the claims of each member of the Class, and the Class Representatives have no adverse interest to any Class Member. The Class Representatives have a financial interest in this matter because of paying the unlawful Fire Fees and will litigate vigorously to obtain a successful result for each member of the Class. Class Counsel is experienced in class action litigation and will vigorously pursue the claims of the Class. Class Counsel has successfully defended and prosecuted class action cases and complex litigation cases in State and Federal court. Lead Class Counsel, Derek A. Schroth, is Board Certified in City, County, and Local Government Law and is an expert on local government matters.

56. This action may be maintained pursuant to Florida Rule of Civil Procedure 1.220(b)(2). The City's imposition of unlawful Fire Fees has an effect on all putative Class Members. The City illegally charged and collected Fire Fees.

57. This Class may also be maintained pursuant to Florida Rule of Civil Procedure 1.220(b)(3) because questions of law and fact are common to the Class Representatives and other putative Class Members.

58. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The damages suffered by each Class Member will be relatively small although not insignificant. The expense and burden of individual litigation makes it virtually impossible for members of the Class to effectively obtain redress individually for the City's wrongful imposition of Fire Fees.

Declaratory Judgment and Common Fund Allegations

59. Pursuant to Section 86.011, Florida Statutes, this Court may render a Declaratory Judgment on whether the City has the power or right to impose upon its utility customers a monthly Fire Fee.

60. There is an immediate, substantial and actual justiciable controversy between the putative Class Members and the City. Acting pursuant to Ordinance 2010-043, and its predecessors, the City has imposed, and continues to impose, more than \$49,000,000.00 in Fire Fees on the putative Class Members.

61. The Class Representatives are uncertain and are in doubt as to whether the City has a legal right to charge and not refund the Fire Fees.

62. The City will not voluntarily stop charging Fire Fees to Class Members. See Demand for Refund (December 3, 2013) attached hereto as Exhibit “T.”

63. The City will not refund any previously paid Fire Fees to Class Members. See Demand for Refund (December 3, 2013) attached hereto as Exhibit “T.”

64. The Class Representatives claim that the City’s Fire Fees are illegal taxes and are therefore interested in the invalidity of the City’s practice of charging Fire Fees to its utility customers. All putative Class Members should be made parties to this case because each Class Member has a claim and interest which would be affected by this Court’s declaration that the City’s practice of charging Fire Fees to its utility customers is invalid and that the putative Class Members are entitled to a refund.

65. The City claims that its Fire Fees were properly imposed in 2006 “pursuant to [the] City’s constitutional home rule authority and pursuant to Section 166.201, Florida Statutes” See Second Amended Complaint, attached hereto as Exhibit “K,” at ¶¶ 4, 7.

66. The City Attorney has also opined to the City that he “believe[s] that the [Fire Fee] is a valid user fee on what is arguably a traditional utility” See Mem. of City Attorney (November 30, 2010), attached hereto as Exhibit “N,” at 3.

67. At the same time, the City also contends that it “is in doubt as to its rights” regarding the Fire Fees. See Second Amended Complaint, attached hereto as Exhibit “K,” at ¶ 18.

68. The City has been uncertain regarding the legality of its Fire Fees since their 2006 inception, and long before they were repealed and subsequently re-enacted. See City of Ocala Council Minutes (June 6, 2006), attached hereto as Exhibit “C,” at 15.

69. More specifically, the City was cautioned in 2006, by Councilman Kyle A. Kay, that the Fire Fees are “a **cloak and dagger** maneuver to get more money from the tax payer[,]” in an attempt to “rationaliz[e] an across the board **tax increase** without increasing the millage rate.” See Ocala City Council Work Session Minutes (May 23, 2006), attached hereto as Exhibit “B,” at 4 (emphasis added).

70. Pursuant to Section 86.101, Florida Statutes, this Court should resolve Class Representatives’ and the City’s uncertainty regarding whether the City has a legal right to charge and not refund the Fire Fees. The Florida Legislature empowers this Court to “settle and afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and [Chapter 86] is to be liberally administered and construed.” FLA. STAT. § 86.101 (2013).

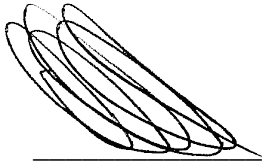
WHEREFORE, the Class Representatives, Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse, individually and as a Representative of a Class of all similarly situated others, and Dale W. Birch, individually and as a Representative of a Class of all similarly situated others, respectfully request this honorable Court to enter judgment:

A. Certifying (1) the class described herein as represented by the Class Representatives, and (2) Bowen Radson Schroth, P.A. as Class Counsel, with Derek A. Schroth, Esq., serving as Lead Class Counsel, pursuant to Florida Rule of Civil Procedure 1.220(b)(2), or alternatively, Florida Rule of Civil Procedure Rule 1.220(b)(3), and providing notice to all Class Members,

B. Declaring Defendant’s Fire Fees and any ordinances establishing or re-enacting such fees to be void, invalid, illegal and unconstitutional,

- C. Directing Defendant to establish a common fund comprised of all illegally collected Fire Fees, to the fullest extent allowed by law, to be distributed to the Class Members less Class Counsel's attorney's fees and costs,
- D. Refunding, to the fullest extent allowed by law, all amounts paid and less Class Counsel's attorney's fees and costs, for the unlawful Fire Fees,
- E. Awarding attorney's fees to Class Counsel from the common fund,
- F. Awarding costs from the common fund,
- G. Providing additional compensation to the Class Representatives pursuant to Florida law, and
- H. Awarding such other and further relief as the Court deems proper to render justice.

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DEREK A. SCHROTH
Board Certified in City, County & Local Government Law
Florida Bar No. 0352070
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by e-mail service to George Franjola, Esq., Gilligan, Gooding & Franjola, P.A., at gfranjola@ocalalaw.com, pgilligan@ocalalaw.com, and kpeterston@ocalalaw.com, this 10th day of April, 2014.



DEREK A. SCHROTH

Ordinance

5554

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, ADDING AN ARTICLE III, TO BE ENTITLED "EMERGENCY FIRE SERVICE AVAILABILITY FEE"; ADDING SECTIONS TO BE NUMBERED 30-50 THROUGH 30-54; PROVIDING FOR DEFINITIONS; PROVIDING FINDINGS AND BACKGROUND; PROVIDING FOR THE IMPOSITION OF AN EMERGENCY FIRE SERVICE AVAILABILITY FEE; PROVIDING FOR APPLICABLE IMPOSITION DATE, COLLECTION AND BILLING OF FEES, AND FOR FUTURE CITY COUNCIL REVIEW; PROVIDING FOR USE OF REVENUE AND INTERNAL ACCOUNTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That the Code of Ordinances, City of Ocala, Florida, is hereby amended by adding Article III, sections to be numbered 30-50 through 30-54, which sections read as follows:

ARTICLE III. EMERGENCY FIRE SERVICE AVAILABILITY FEE.

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services.

Sec. 30-51. Findings and background.

Findings and background. The city council finds and declares as follows:

- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) The benefits of emergency fire service availability received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a

EXHIBIT

A

service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.

- (d) Insufficient funding is available from other General Fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (c) Imposing an emergency fire service availability fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (f) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (g) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

Sec. 30-52. Emergency fire service availability fee imposed.

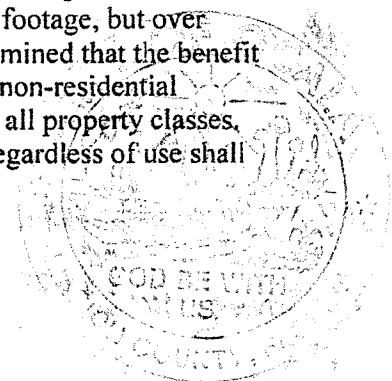
To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service availability based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) Residential fee. All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit for the residential class is as follows:

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>	<u>FY2011</u>
\$12.00	\$14.30	\$14.30	\$15.20	\$15.20

- (b) Non-residential. Non-residential properties are classified as either Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

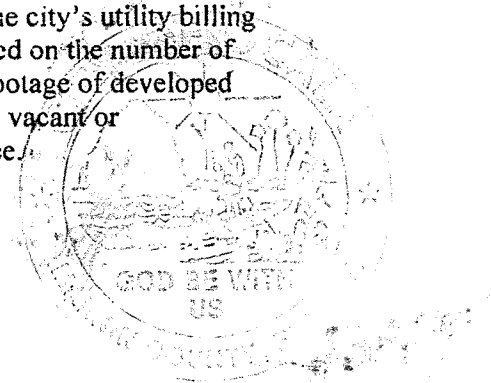


Fire Services Fee Schedule for Institutional, Governmental and Commercial/Industrial (C/I) Property

Sq. Ft. Range	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80
50,001 - 60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001 - 70,000	\$ 356.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001 - 80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001 - 90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001 - 100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001 - 120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001 - 140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001 - 160,000	\$ 821.86	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001 - 180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001 - 200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19
200,001 - 250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001 - 300,000	\$1,506.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001 <	\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

Sec. 30-53. Applicability; collection; review.

- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, as defined by the city's utility billing system, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.



- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manor as that used with all other portions of the bill for utility services.
- (c) The emergency fire service fee shall be reviewed by the city council in July of 2011 and, thereafter, at five year intervals, for the purpose of determining the appropriate fee for the following five fiscal years required to recover a portion of the projected cost of providing emergency fire services as determined by the city council. This review will be based on the most current data available.

Sec. 30-54 Use of revenue

The proceeds received by reason of the establishment of this emergency fire service fee shall be used as a portion of the revenues budgeted by the city for providing fire services.

Section 2. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.

ATTEST:

Valerie J. Forster
Valerie J. Forster
City Clerk

CITY OF OCALA

By: Daniel Owen
Daniel Owen
President, Ocala City Council

Approved/ Denied by me as Mayor of the City of Ocala, Florida, on August 9th, 2006.

By: Randall Ewers
Randall Ewers
Mayor

Approved as to form and legality:

Patrick G. Gilligan
Patrick G. Gilligan
City Attorney

Ordinance No. 5554
Introduced: July 25, 2006
Adopted as amended: August 8, 2006
Legal Ad No: 0774074

THIS IS TO CERTIFY THE FOREGOING TO
BE A TRUE AND ACCURATE COPY
Daniel Owen
CITY CLERK

**OCALA CITY COUNCIL
WORK SESSION MINUTES
MAY 23, 2006**

Meeting Statistics. The Ocala City Council conducted a work session meeting in the Council Chamber, City Hall, 151 SE Osceola Avenue, on Tuesday, May 23, 2006, beginning at 11:46 a.m.

Elected Officials.

Daniel Owen, President	Present
Mary S. Rich, President Pro Tem	Present
Kent Guinn, Council member	Absent
Kyle Kay, Council Member	Present
Charles Ruse, Jr., Council Member	Present
Randall Ewers, Mayor	Present

Municipal Officials/Others Present. Assistant City Manager Bill Looney, Assistant to City Manager Astrida Trupovnieks, Information/Publications Manager Sonny Allen, City Clerk Valerie Forster, Director Finance and Administrative Services Don Corley, Administrative Chief Chuck Backhus, Revenue Officer Myron Taylor, Senior Budget Analyst Karen White, City Engineer Bruce Phillips, Director of OEU Becky Matthey, Fire Chief Dan Gentry, Deputy Fire Chief Bill Mallory, Internal Auditor Eric Lewerenz, the news media and others attended the meeting.

Fire Protection Service Fee City Manager Nugent stated that new revenue sources are needed to support fire and police services due to rising costs and demand for service. Annexation of the urban service areas will increase both demand for service and costs. Ad valorem tax revenue is not sufficient to cover the increasing costs of these services. The key to fire service is the city's readiness and prompt response to serve its customers.

Director of Finance and Administrative Services Corley presented an overview of the financial strategy for balancing the budget. The budget year 2007 is the time when aggressive measures must be taken to increase revenue to support the proposed fiscal year budget. Aggressive annexation is the primary course to increase tax revenue.

Marion County will place a one-cent sales tax proposal on the election ballot. The one-cent sales tax would support major road improvements and maintenance.

The Electric Utility and Water and Sewer Utility Departments will continue to transfer monies to support the General Fund. The fire pension costs will be consistent with the other two city pension plans to provide equity for all employees.

The City will only support increased EMSA expenditures consistent with increases in the City of Ocala's revenue.

President Owen asked if the City has an option to cancel its continued support to EMSA. Mr. Corley explained that the City must honor its commitment for the last year of the partnership with the hospitals and Marion County. A one year notification must be given to exercise the option to leave the partnership. State legislature mandates the responsibility to provide emergency medical services to the county.

EXHIBIT
B

**OCALA CITY COUNCIL
WORK SESSION MINUTES
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The City will support salary increases for employees consistent with the employee cost index. However, discretionary cuts in budget expenditures will be made. Employees will be required to pay a portion of the increased cost for health care.

A business plan will be implemented for the golf courses that will financially support their operation. The road transportation and maintenance program will be suspended for one year. Budgetary stringency will be exercised when allocating resources that support new programs.

The current millage rate will be maintained based upon extensive study of multiple areas that would be adversely affected by an increase.

A fire service fee that is competitive with industry norms is a course to consider. Burton and Associates, a consulting firm, was retained to prepare a proposal to implement a fire service fee.

Fire Chief Gentry presented an overview of the Fire Department. Service calls during the past sixteen years have increased from 7,000 to 16,327 calls last year. New stations have been opened and equipment has been relocated to reduce response time. These changes reduced budget expenditures as well as increased benefits to citizens. Programs are in place to provide continuous training, state inspections and fire prevention. Criteria are established to provide employee safety, shorter response time to benefit citizens, and a process to maintain excellent ISO ratings. Expected city growth will dramatically increase the demand for additional and expanded services.

Mike Burton, Burton and Associates Consulting, presented a study that projected objectives of a proposed fire service fee designed to enhance fire services to citizens of Ocala. The objective of the study is to provide a means to recover all or a portion of the costs to provide fire services. The fee would need to be a fair and equitable assessment, based on types of properties receiving services. The fee would be included on monthly utility statements to the customers. The basis of the fee would be based on rational of relationship of fee burden in terms of costs and benefit received. Properties would be placed in distinctive classes, such as residential, institutional, governmental, and commercial-industrial. Square footage of developed property would be a determining factor in fee assessment.

Mr. Burman spoke regarding specific calculations of the fire service fee. This presentation included consideration for cost to the city and the allocated benefit. Service calls made would affect the costs factor, and principal benefits would be the availability of the fire service. A fire assessment survey for residential units in other Florida cities and counties was reviewed. Service fee analysis, for both residential and non-residential properties were provided. Fire protection service fees were based on a cost recovery of 44% of cost, which would require the city to make an annual contribution to the general revenue fund. Seven options were presented to establish and maintain a fire service fee. The final recommendation from the consulting firm was to adopt Options I and IV. Option I would establish a non-advalorem dedicated funding source at 100% or less of the costs. Option IV would enact a fire fee of \$12 per residential unit that would support approximately 44% of the current cost; however it would require incremental fee

**OCALA CITY COUNCIL
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increases to cover future cost of services. A fire assessment survey for residential units in other Florida cities and counties was also reviewed.

Council member Kay asked for an estimate of dollars needed for the Fire Department. Mr. Nugent replied that \$5 million is needed, in addition to \$8.4 million from the General Fund. Fire stations seven and eight are dependent upon annexation and the proposed fire fee.

Council member Ruse asked if the anticipated money be used for construction of facilities and not for pensions. Mr. Nugent replied, yes. Mr. Ruse asked for confirmation whether the fee would pay for anticipated growth in the Fire Department. Mr. Nugent explained it is anticipated that the money will go towards growth, capital improvements, and maintenance of the present system. The costs would be spread over the entire city. When a builder develops property, the owner would pay an impact fee, that would help pay for growth.

Mayor Ewers clarified that development of the fee is based upon revenue requirements that include not only cost in the operating budget for the fire services, but also includes the capital equipment.

Council member Ruse responded that he understood that it would not be used for operations, but for capital improvements. Mr. Ruse stated that operating costs means pensions and salaries. He asked for clarification of his understanding.

Mr. Corley explained that the fee would support recurring operating expenditures.

Mr. Corley replied this fee would spread the costs of fire services to everyone in the city that will reap the benefit of the service. The proposed fee would fund recurring expenditures of those dollars. Stations 7 and 8 would only be included if annexation is approved.

Council member Ruse asked if pension costs are considered as part of recurring operating expenses. He suggested a fire impact fee to fund growth. New construction and growth should pay for this service expansion, not current residents of the city. Growth should pay for itself. The question was asked why there was no differentiation between the burden and the benefit received. Residents of the city have already paid for their service.

Council member Ruse asked for confirmation that the fire fee would support anticipated growth.

Mr. Nugent explained that fees collected would be allocated for capital improvements, maintenance, and future growth.

Mr. Corley explained that recurring costs include those costs that are already in place. However, as growth continues with new developments, the fire fee will be placed on all residents receiving fire services. The goal is to maintain an excellent ISO level and the current service level.

Council member Ruse stated that only the new growth should be responsible for city expansion. As previously stated, there must be a relationship between the burden of the fee, in terms of cost and the benefits received.

**OCALA CITY COUNCIL
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Council member Kay expressed the opinion that current residents and commercial customers should not be further taxed for their current level of service. New growth should be responsible for new service demands. This is a cloak and dagger maneuver to get more money from the tax payer. This plan rationalizes an across the board tax increase without increasing the millage rate. Designated ad valorem tax monies should be reassessed and consideration given to a potential fire impact fee. This fee would help pay the costs for the additional burden placed on the Fire Department.

Mr. Corley explained the three areas of costs for fire services, current residents, tax exempt customers, and those in the growth related area which will need infrastructure. The fee would allow all to pay their fair share, such as schools, churches and the county, which would take pressure off the general fund budget. A reoccurring source of income is needed to support current fire operating expenses which includes Station 6. Stations 7 and 8 would only be considered after the passage of annexation. This fee would be very competitive and would include all citizens receiving service, instead of only property owners.

Council member Kay agreed that annexation is an absolute priority for the city. However, he expressed concern that costs of living in the city would escalate beyond reason. The City may need to reassess its funding and make allocations to meet the basic needs for fire protection and crime prevention.

Mr. Corley stressed the fact that a commitment has been made for Fire Station 6 and this must be funded. This will give us a competitive edge to provide better fire service for annexed areas as well as maintain our current Level 3 ISO rating. Citizens will benefit by paying lower insurance rates. This fee will allow the city to meet its obligations.

Mr. Corley gave an example of monthly fire fees that would be paid by Publix, in the city it would be \$4,900 versus the county at \$8,000.

Council member Ruse questioned the need for the fee to be paid on a monthly basis. Mr. Corley explained the cash flow issue could be managed better on a monthly basis.

Council member Ruse asked what happens if the bill is not paid. Mr. Corley replied that utilities would be cut for non-payment, and advised that there is an allowance for bad debt.

Council member Ruse asked if the utilities were cut off on a building would the impact fee be collected. Mr. Corley responded that this situation had not been addressed.

Council member Ruse discussed the feasibility of assessing a fee to agricultural property or those properties without structures. He also discussed the possibility versus probability of fire occurring in buildings based upon their uses. Building usage is certainly a consideration when insurance is placed on a building. Consideration should be given to assessing fees for all property, with and without structures. The building use and the type of construction material should also be factors to determine an appropriate fee.

**OCALA CITY COUNCIL
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President Owen advised that the city needs to maintain the current ISO rating to keep lower insurance rates. The current ISO rate will provide insurability for properties located within the city limits at reduced rates.

Mr. Corley reminded everyone that State Farm and All State insurance companies will not issue a homeowners policy unless the house is located within five miles of a fire station.

Mayor Ewers advised that he had obtained information which confirms higher ISO rates will adversely affect insurability.

Council member Ruse asked if the higher insurance rate was based just on the fire component or the entire rate. Mayor Ewers responded that the higher rate was based on the building in this instance. However, insurance formulas for assessing rates may differ between companies.

Council member Ruse excused himself from the meeting at 12:59 p.m.

Council member Rich asked for confirmation of advantages should the proposed budget be approved.

Mr. Corley advised that approval of the proposed budget would maintain the current ISO rate for fire service, which in turn would benefit city residents and positively affect the issue of annexation. Citizens annexed will acquire insurability as well as lower insurance rates, due to the ISO rate for Ocala. This proposal will provide equity to all the citizens.

President Owen expressed the opinion that factual information should be obtained from a number of insurance companies, regarding their insurability policies and rates. Cities that have implemented a fire service fee are in a position to provide valuable information. Information is needed regarding determination of insurance premiums for homeowner policies, and how ISO fire ratings affected their costs.

Mr. Corley advised that insurance companies do consider the ISO ratings to determine policy costs. Excellent ISO ratings provide savings to homeowner policy holders. It is imperative that the city finance its fire services. A closer look at the millage rate may be a partial solution to consider; however, a reasonable and equitable fire fee needs to be implemented to maintain current service levels.

Mayor Ewers suggested that information be obtained from cities that have a fire fee, regarding the benefits, disadvantages, or consequences of the implementation.

Mr. Burton advised council that decisions to be made are about choices and consequences. Costs recovery can be accomplished by either raising the millage rate, adopting a service fee, or by reducing the level of service. The majority of cities with a fire service fee employ a partial cost recovery plan.

**OCALA CITY COUNCIL
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Mayor Ewers reviewed the disparity between residential and commercial fire service fees. He suggested that types of services be categorized and appropriate fees assessed. Population of the city has not increased significantly, however service calls have almost doubled.

President Owen asked when council action would be needed. Mr. Nugent responded that the plan was to bring the proposal for adoption to council within two or three weeks. City revenues are decreasing while the demand for services is increasing. Annexation will necessitate the need to build and staff two additional fire stations. Implementation of a fire service fee would be a more equitable way to partially recover costs for providing service. Another way to curtail expenditures is to eliminate entire city programs, and this can be done if council so desires.

Council member Rich commented that the current ISO fire rating should be maintained. Discussions with other city officials confirmed that ISO ratings did in fact jeopardize or improve their ability to maintain safety of its citizens as well as property.

Mr. Nugent advised that Marion County plans to build ten new fire stations and employ 60 new firefighters. They are planning to upgrade their current fire service fee.

President Owen asked Mr. Nugent to place the fire service fee on the June 6, 2006, agenda. Council members not present will be advised of this plan.

Meeting adjourned. There being no further discussion, the meeting adjourned at 1:17 p.m.

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OCALA CITY COUNCIL MINUTES
JUNE 6, 2006

Meeting Statistics. The Ocala City Council held a regular meeting in the Council Chamber of City Hall, 151 SE Osceola Avenue, on June 6, 2006 beginning at 7:05 p.m.

Invocation and Pledge of Allegiance. Chaplain Green delivered the invocation and led the Pledge of Allegiance.

Elected Officials.

Daniel Owen, Council President	Present
Mary S. Rich, President Pro Tem	Present
Reuben Kent Guinn, Council member	Present
Kyle A. Kay, Council member	Present
Charles Ruse, Jr., Council member	Present
Randall Ewers, Mayor	Present

Municipal Officers/Others Present. The meeting was also attended by City Manager Paul K. Nugent, City Attorney Patrick G. Gilligan, City Clerk Valerie J. Forster, Deputy City Clerk Vicky L. Ramsey, Assistant City Manager Bill Looney, Information/Publications Manager Sonny Allen, Assistant to the City Manager Astrida Trupounieks, Planning Director Chighizola, Community & Business Development Manager Marc Mondell, City Engineer Bruce Phillips, Real Estate Manager Joe Switt, Electric Utility Director Becky Matthey, Electric Utility Deputy Director Jay Meeks, Electric Utility Deputy Director John Hill, Recreation and Parks Director Dave Pritchard, Community Development Zoning/Code Enforcement Chief Nancy K. Overstreet, Fire Chief Dan Gentry, Purchasing Director Darryl Muse, Finance & Administrative Services Director Donald A. Corley, Internal Auditor Eric Lewerenz, Public Works Chief of Facilities Maintenance James C. Dobbs, Public Works Maintenance Mechanic II Kenneth Daniel, Deputy Police Chief Greg Graham, a police department representative, the news media and other interested parties.

Presentation/longevity award. President Owen and City Manager Nugent presented a longevity award to Public Works Maintenance Mechanic II Kenneth Daniel for 20 years of service to the City.

Approved/Council member Guinn moved and Council member Ruse seconded approval of an Alcohol Beverage Location Permit for on-premise consumption of beer and wine at Mango's, 20 SW Broadway Street. President Owen opened the public hearing at 7:08 p.m. to receive comments.

Juan Bohorquez, the applicant, requested an alcohol permit because the restaurant will be open for dinner with live entertainment.

There being no further discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:10 p.m.

EXHIBIT
C

OCALA CITY COUNCIL MINUTES
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Introduced/Council member Rich introduced Resolution No. 2006-58, accepting and appropriating funds for \$1,000 from the Wal-Mart Foundation to implement crime prevention initiatives. Council member Rich introduced Resolution No. 2006-58 entitled, "A RESOLUTION TO ACCEPT AND APPROPRIATE FUNDS FROM THE WAL-MART FOUNDATION TO IMPLEMENT CRIME PRESENTATION INITIATIVES."

Adopted/Ordinance No. 5531, (Case ANX 06-0010) to annex approximately 12.5 acres in the 200 to 500 blocks of NE 35th Street (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Guinn). President Owen opened the public hearing at 7:11 p.m. to receive comments.

The City Clerk filed proof of publication (Legal Ad No. 0780614, May 25, 2006 & June 2, 2006).

Council member Guinn moved and Council member Rich seconded that Ordinance No. 5531 entitled, "AN ORDINANCE ANNEXING TO THE CITY OF OCALA, FLORIDA, CERTAIN PROPERTY LOCATED IN THE 200 TO 500 BLOCKS OF NE 35TH STREET, SECTION 05, TOWNSHIP 15 SOUTH, RANGE 22 EAST MARION COUNTY, FLORIDA, PURSUANT TO CHAPTER 171, FLORIDA STATUTES PROVIDING FOR TERMS AND CONDITIONS OF SAID ANNEXATION, DESCRIBING THE AREA TO BE ANNEXED; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case ANX 06-0010 included as Exhibit A and other evidence presented to City Council.

Planning Director Chighizola explained these two properties would become a single-family development.

There being no discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:13 p.m.

Adopted/Ordinance No. 5532, (Case ANX 06-0012) to annex approximately 5.69 acres in the 4800 to 4900 blocks of East Silver Springs Boulevard (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Kay). President Owen opened the public hearing at 7:13 p.m. to receive comments.

The City Clerk filed proof of publication (Legal Ad No. 0780614, May 25, 2006 & June 2, 2006).

Council member Kay moved and Council member Ruse seconded that Ordinance No. 5532 entitled, "AN ORDINANCE ANNEXING TO THE CITY OF OCALA, FLORIDA, CERTAIN PROPERTY LOCATED IN THE 4800 TO 4900 BLOCKS OF EAST SILVER SPRINGS

OCALA CITY COUNCIL MINUTES
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BOULEVARD, SECTION 01, TOWNSHIP 15 SOUTH, RANGE 22 EAST MARION COUNTY, FLORIDA, PURSUANT TO CHAPTER 171, FLORIDA STATUTES PROVIDING FOR TERMS AND CONDITIONS OF SAID ANNEXATION, DESCRIBING THE AREA TO BE ANNEXED; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case ANX 06-0012 included as Exhibit A and other evidence presented to City Council.

Planning Director Chighizola explained this would be a restaurant site.

There being no discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:15 p.m.

Tabled to June 20, 2006/Ordinance No. 5533, (Case ANX 06-0002) to annex approximately 1.49 acres in the 4400 block of SW College Road; Ordinance No. 5534, (Case LUC 06-0003) to change the land use from Urban Reserve (County) to Retail Services (City) for property in the 4400 block of SW College Road, approximately 1.49 acres; Ordinance No. 5535, (Case ZON 06-0002) to rezone approximately 1.49 acres from A-1, General Agriculture (County) to SC, Planned Shopping Center District (City) for property in the 4400 block of SW College Road. President Owen opened the public hearing at 7:15 p.m. to receive comments.

Planning Director Chighizola requested these three items be tabled for two weeks because minor drainage issues have not been resolved between the developer, the applicant and DOT (Department of Transportation).

Council member Ruse inquired what consequences would there be if these were adopted or denied. Planning Director Chighizola replied if these were denied the applicant would not be able to apply again for one year.

Council member Ruse moved and Council member Guinn seconded to table these three items until June 20, 2006.

There being no further discussion from Council or the audience, the motion to table this item and the next two items carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:20 p.m.

Adopted/Ordinance No. 5536, (Case ZON 06-0014) to rezone approximately 1.79 acres from PUD-8, Planned Unit Development with a maximum density of eight units per acre, to R-3, Multiple Family Residential, for property at 1811 SW 29th Terrace (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Guinn). President Owen opened the public hearing at 7:20 p.m. to receive comments.

OCALA CITY COUNCIL MINUTES
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The City Clerk filed proof of publication (Legal Ad No. 0780613, May 26, 2006).

Council member Guinn moved and Council member Rich seconded that Ordinance No. 5536 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF OCALA, FLORIDA, CHANGING FROM PUD-8, PLANNED UNIT DEVELOPMENT WITH A MAXIMUM DENSITY OF EIGHT UNITS PER ACRE, TO R-3, MULTIPLE FAMILY RESIDENTIAL, CERTAIN PROPERTY LOCATED AT 1811 SW 29TH TERRACE, OCALA, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case No. ZON 06-0014 included as Exhibit A and other evidence presented to City Council.

Fred Schweitz, the applicant, stated this would be developed as an assisted living facility.

There being no further discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:24 p.m.

Adopted/Ordinance No. 5537, (Case LUC 06-0011) to change the land use from Professional Services to Retail Services for property in the 100 block of SE 8th Street, approximately 3.01 acres (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Kay). President Owen opened the public hearing at 7:24 p.m. to receive comments.

The City Clerk filed proof of publication (Legal Ad No. 0780613, May 26, 2006).

Council member Kay moved and Council member Guinn seconded that Ordinance No. 5537 entitled, "AN ORDINANCE AMENDING THE FUTURE LAND USE MAP SERIES OF THE CITY OF OCALA, FLORIDA, COMPREHENSIVE PLAN AS REQUIRED IN SECTION 163.3161 THROUGH AND INCLUDING SECTION 163.3245, FLORIDA STATUTES; DETAILING THE LAND USE CHANGE INVOLVED AND TO AMEND THE FUTURE LAND USE MAP SERIES FROM PROFESSIONAL SERVICES TO RETAIL SERVICES, FOR PROPERTY LOCATED IN THE 100 BLOCK OF SE 8TH STREET OCALA, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case LUC 06-0011 included as Exhibit A and other evidence presented to City Council.

Planning Director Chighizola said this would be a townhouse and retail product, which will need a special exception. The developer will also have to enter into a Chapter 163 Developer's Agreement. This ordinance will not be effective until the agreement is complete.

OCALA CITY COUNCIL MINUTES
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Attorney Steve Gray, representing the applicant, was available for questions.

Council member Ruse asked why this is being changed to retail services if this is going to be residential and infill. Mr. Gray replied this gives the applicant B-2 zoning, which allows the applicant to go to 20 units per acre with a special exception.

Planning Director Chighizola explained that staff was going to implement residential under a PUD (Planned Unit Development), but because the property was less than 10 acres, the mixed use could not be utilized.

There being no further discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:33 p.m.

Adopted/Ordinance No. 5538, (Case ZON 06-0013) to rezone approximately 3.01 acres from O-1, Office to B-2, Community Business for property in the 100 block of SE 8th Street (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Rich).
President Owen opened the public hearing at 7:33 p.m. to receive comments.

The City Clerk filed proof of publication (Legal Ad No. 0780613, May 26, 2006).

Council member Rich moved and Council member Ruse seconded that Ordinance No. 5538 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF OCALA, FLORIDA, CHANGING FROM O-1, OFFICE, TO B-2, COMMUNITY BUSINESS, CERTAIN PROPERTY LOCATED IN THE 100 BLOCK OF SE 8TH STREET, OCALA, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case ZON 06-0013 included as Exhibit A and other evidence presented to City Council.

There being no discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:34 p.m.

Adopted/Ordinance No. 5539, (Case ZON 06-0022) to rezone approximately 1.05 acres from M-1, Light Industrial to M-2, Medium Industrial for property in the 1900 block of North Magnolia Avenue (OPZC 5/8/06; unanimous approval) (Introduced 5/23/06 by Council member Ruse).
President Owen opened the public hearing at 7:34 p.m. to receive comments.

The City Clerk filed proof of publication (Legal Ad No. 0780613, May 26, 2006).

OCALA CITY COUNCIL MINUTES
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Council member Ruse moved and Council member Kay seconded that Ordinance No. 5539 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF OCALA, FLORIDA, CHANGING FROM M-1, LIGHT INDUSTRIAL, TO M-2, MEDIUM INDUSTRIAL, CERTAIN PROPERTY LOCATED IN THE 1900 BLOCK OF NORTH MAGNOLIA AVENUE, OCALA, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida except that adoption by sections on second reading be waived and based on staff's recommendation for Case ZON 06-0022 included as Exhibit A and other evidence presented to City Council.

Planning Director Chighizola explained this is located on the north side of the Magnolia CRA (Community Redevelopment Area), and the applicant needs outdoor storage. He added there is no M-2 zoning in the front of the property and Jacksonville Road is located on the backside.

There being no discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

President Owen closed the public hearing at 7:37 p.m.

Introduced/Ordinance No. 5540/concerning zoning changes (Second and Final Reading/Hearing is scheduled for June 20, 2006). President Owen opened the public hearing at 7:37 p.m. to receive comments.

Council member Rich introduced Ordinance No. 5540 entitled, "AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING ZONING; AMENDING SECTION 122-3 PROVIDING DEFINITIONS BY ADDING DEFINITION FOR NEIGHBORHOOD STORAGE CENTER; AMENDING SECTION 122-286 PROVIDING FOR NON RESIDENTIAL LOT WIDTH REQUIREMENTS IN THE MEDIUM INDUSTRIAL (M-2) AND HEAVY INDUSTRIAL (M-3) ZONING DISTRICTS; AMENDING SECTION 122-287 PROVIDING FOR TABLE OF PERMITTED USES (EXCLUDING CRA) BY PROVIDING FOR LINE 34, "GARDEN AND NURSERY SALES" AS A PERMITTED USE IN THE A-1, B-2, B-2A, B-4 AND B-5 ZONING DISTRICTS AND AS A SPECIAL EXCEPTION IN THE B-1 AND B-1A ZONING DISTRICTS SUBJECT TO THE CRITERIA IN THE LEGEND #35, PROVIDING FOR LINE 36A, "HOME GARDEN/HOBBY FARM EQUIPMENT SALES" AS A SPECIAL EXCEPTION IN THE B-4 ZONING DISTRICT, PROVIDING FOR LINE 77.1, "CONFERENCE CENTER" AS A PERMITTED USE IN THE R-3 ZONING DISTRICT SUBJECT TO CRITERIA IN THE LEGEND #36 AND A PERMITTED USE IN THE B-2, B-2A, B-4 AND SC ZONING DISTRICTS, PROVIDING FOR LINE #99, "LAUNDRY AND DRY CLEANING SERVICES" AS A PERMITTED USE IN THE B-2, B-2A, B-4, B-5, SC AND M-1 ZONING DISTRICTS, AND PROVIDING FOR LINE 105A, "NEIGHBORHOOD STORAGE CENTER" AS A PERMITTED USE IN THE B-1, B-1A, B-2, B-2A, AND B-4 ZONING DISTRICTS SUBJECT TO THE CRITERIA IN THE LEGEND #37; AMENDING SECTION 122-287 PROVIDING A TABLE OF PERMITTED USES (EXCLUDING CRA) PROVIDING FOR "X35" TO THE LEGEND REFERENCING CRITERIA IN SECTION 122-

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1212 FOR GARDEN AND NURSERY SALES, PROVIDING FOR "X36" TO THE LEGEND REFERENCING CRITERIA IN SECTION 122-1213 FOR A CONFERENCE CENTER, PROVIDING FOR "X37" TO THE LEGEND REFERENCING CRITERIA IN SECTION 122-1214 FOR NEIGHBORHOOD STORAGE CENTER, AND PROVIDING FOR "SE22" TO THE LEGEND REFERENCING CRITERIA IN SECTION 122-1212 FOR GARDEN AND NURSERY SALES; AMENDING SUBSECTION 122-352(3) PROVIDING FOR CONFERENCE CENTER AS A PERMITTED PRINCIPAL USE IN THE MULTIFAMILY RESIDENTIAL (R-3) DISTRICT; AMENDING SUBSECTION 122-583(3) PROVIDING FOR NEIGHBORHOOD STORAGE CENTER (REFERENCING SECTION 122-1214) AS A PERMITTED PRINCIPAL USE IN THE NEIGHBORHOOD BUSINESS (B-1) DISTRICT; AMENDING SUBSECTION 122-603(3) PROVIDING FOR NEIGHBORHOOD STORAGE CENTER (REFERENCING SECTION 122-1214) AS A PERMITTED PRINCIPAL USE IN THE LIMITED NEIGHBORHOOD BUSINESS (B-1A) DISTRICT; AMENDING SUBSECTION 122-622(3) PROVIDING FOR NEIGHBORHOOD STORAGE CENTER (REFERENCING SECTION 122-1214) AS A PERMITTED PRINCIPAL USE IN THE COMMUNITY BUSINESS (B-2) DISTRICT; AMENDING SUBSECTION 122-625(3) PROVIDING FOR NEIGHBORHOOD STORAGE CENTER (REFERENCING SECTION 122-1214) AS A PERMITTED PRINCIPAL USE IN THE LIMITED COMMUNITY BUSINESS (B-2A) DISTRICT; AMENDING SUBSECTION 122-723(3) PROVIDING FOR NEIGHBORHOOD STORAGE CENTER (REFERENCING SECTION 122-1214) AS A PERMITTED PRINCIPAL USE IN THE GENERAL BUSINESS (B-4) DISTRICT; AMENDING SUBSECTIONS 122-724(2) AND (3) PROVIDING FOR HOME GARDEN/HOBBY FARM EQUIPMENT SALES AND DAY LABOR SERVICE ESTABLISHMENT (REFERENCING SECTION 122-1215) AS SPECIAL EXCEPTIONS IN THE GENERAL BUSINESS (B-4) DISTRICT; AMENDING SUBSECTION 122-743(3) BY PROVIDING FOR DAY LABOR SERVICE ESTABLISHMENT AS A PERMITTED PRINCIPAL USE (REFERENCING SECTION 122-1215) IN THE WHOLESALE BUSINESS (B-5) DISTRICT; AMENDING SUBSECTION 122-762(3) PROVIDING FOR LAUNDRY AND DRY CLEANING SERVICE AS A PERMITTED PRINCIPAL USE IN THE LIGHT INDUSTRIAL (M-1) DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE."

President Owen closed the public hearing at 7:42 p.m.

Introduced/Ordinance No. 5541 concerning noise. Council member Ruse introduced Ordinance No. 5541 entitled, "AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 34, ENVIRONMENT, ARTICLE VII, NOISE, SECTION 34-171, UNNECESSARY OR DISTURBING NOISE PROHIBITED; AMENDING SUBSECTION 34-171 (b); PROVIDING FOR NOISE RESTRICTIONS ON CONSTRUCTION ACTIVITIES THAT ARE WITHIN 500 FEET OF A RESIDENTIAL USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE."

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President Owen asked about enforcement procedures. City Manager Nugent replied citizens could report problems to the Code Enforcement Division from 8:00 a.m. to 5:00 p.m. and to the Police Department after 5:00 p.m. Monday through Friday.

Council member Ruse inquired if violations would be charged as a misdemeanor. City Attorney Gilligan replied yes.

Council member Rich asked if staff notifies construction companies of the new ordinance. City Manager Nugent responded all licensed contractors would be notified.

Adopted/Ordinance No. 5530, amending the City's Downtown Parking operations (Introduced 5/16/06 by Council member Rich). The City Clerk filed proof of publication (A000170681, May 19, 2006).

Council member Rich moved and Council member Guinn seconded to adopt Ordinance No. 5530 entitled, "AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING PARKING; AMENDING SECTION 66-32 PROVIDING FOR TRAFFIC ENGINEER AND FOR CITY MANAGER AUTHORIZATION CONCERNING PARKING; AMENDING SUBSECTION 66-35(a) CONCERNING IMMOBILIZATION OF VEHICLES BY PROVIDING THAT A MOTOR VEHICLE AGAINST WHICH THERE ARE TWO OR MORE OUTSTANDING PARKING VIOLATIONS MAY BE IMMOBILIZED; AMENDING SECTION 66-41 PROVIDING FOR PENALTIES BY PROVIDING THAT CITY COUNCIL SHALL ESTABLISH FINES BY SEPARATE RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE," be adopted as provided by the Charter of the City of Ocala, Florida.

City Manager Nugent explained currently the traffic engineer determines the location of the parking meters. This ordinance transfers authority to the City Manager or his designee. He added parking fines will be changed by resolution instead of by ordinance and Council member Guinn asked if this has anything to do with where meters will be placed. City Manager Nugent replied that would be based upon working with the Downtown Development Association (DBA) and DDC (Downtown Development Commission).

Daryl Hayman, owner of Downtown Billiards, spoke in opposition because the City is not charging enough to deter employees from parking in front of the businesses. However, he does not want the City to charge too much and scare potential customers away. Mr. Hayman also spoke against the two hour parking restriction, as it could limit the time customers downtown.

Council member Guinn was concerned about restricting the meters to a two-hour limit.

Council member Ruse said if there is going to be a downtown parking garage, the City can not allow free parking on the street.

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Mr. Hayman said if the City is concerned about downtown parking, they should restrict City vehicles from taking up so much parking on the Square when setting up for special events.

President Owen commented that the City is trying to boost business downtown, but will turn around and close the streets on the Downtown Square on a regular basis.

Council member Ruse pointed out the reason the City has the Ice Cream Social is for the sole benefit of downtown businesses.

Council member Ruse asked when the City should put on these events. Mr. Hayman responded the City has several other locations to hold events and questioned why every event is held on the square where streets have to be closed.

President Owen agreed with Mr. Hayman and inquired if there is a way to economically quantify what the City is doing Downtown.

There being no further discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

Mayor's Comments. Mayor Ewers spoke about hurricane season and reported that preparations are underway.

Approved/Council member Guinn moved and Council member Rich seconded approval to award Bid No. B-2951 to Feasterco, Inc. for the construction of Nuby's Corner Substation, additions to Baseline Substation, and additions to Shaw Substation for \$810,589. City Manager Nugent explained this will meet demands of growth and construction will begin start in mid June.

There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Guinn moved and Council member Rich seconded approval to award Bid No. B-2997 to Fortune Electric Co. for the purchase of two transformers for \$1,103,015 to be used in the Dearmin Substation and Silver Springs Substation Sites. City Manager Nugent said this would upgrade a 30-year-old transformer.

There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Rich moved and Council member Ruse seconded approval to purchase electric switches from Gresco for inventory purposes for \$151,200. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

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Approved/Council member Rich moved and Council member Ruse seconded approval to enter into negotiations and execute resulting contract with Municipal Services Bureau for Debt Collection Services/RFP No. 188. Council member Guinn asked what criteria was used. Electric Utility Director Matthey replied the ability to electronically transmit information, record keeping and costs.

Council member Guinn inquired about percentages for collections. Electric Utility Director Matthey responded companies charge 11 to 13%.

There being no further discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Guinn moved and Council member Kay seconded approval of Requisition No. 06B008 for \$168,019.75 to Morse Communications for the replacement of the City's current network switches/State Contract No. 250-000-03-1. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Ruse moved and Council member Kay seconded approval of Requisition No. 06B009 for \$487,614.64 to Morse Communications for the replacement of the City's three-phone switches/State Contract No. 250-000-03-1. City Manager Nugent explained these switches were purchased in 1994 and the new ones will be more reliable and capable of handling voice mail in the future.

There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Ruse moved and Council member Guinn seconded approval to purchase fifty additional concrete poles from Hughes Supply for an estimated amount of \$29,854.50 to be used for upcoming jobs at NE 14th Street and Heathbrook. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Guinn moved and Council member Ruse seconded approval to purchase one 2007 International 4200 with a Loadmaster eight cubic yard rear loader body from Maudlin International Trucks for \$69,070 to replace a 1995 Ford F-150 Pick-up truck. Council member Kay asked why staff is replacing an F-150 pick up truck with an International 4200 Loadmaster. Purchasing Director Muse replied the F-150 was no longer needed to make missed garbage pick-ups and due to growth, a larger truck would be needed.

Council member Guinn inquired what the City does with vehicles that are no longer needed. Purchasing Director Muse replied they are auctioned off at Weeks Auction. President Owen inquired where the proceeds go. City Manager Nugent replied the proceeds go to the general fund, but if it is an enterprise fund department, the funds return to the departments.

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There being no further discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Ruse moved and Council member Kay seconded approval to piggyback from Seminole County with Naztec, Inc. for an estimated amount of \$51,730 for Supply & Service of Controllers, Cabinets with Ethernet and Miscellaneous Appurtenances and Components. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Withdrawn/to execute a contract with Kitson & Partners to review the City golf course operations and develop a five-year business plan/ITN No. 10. City Manager Nugent reported a bid protest was received today.

Purchasing Director Muse explained the bid protest process.

Council member Rich asked if the City chose the lowest bidder. Purchasing Director Muse replied no.

Adopted/Resolution No. 2006-59, establishing parking fines pursuant to Section 66-41 of the City code. Council member Guinn moved and Council member Ruse seconded to adopt Resolution No. 2006-59 entitled, "A RESOLUTION CONCERNING PARKING FINES; ESTABLISHING PARKING FINES PURSUANT TO SECTION 66-41 OF THE CITY CODE."

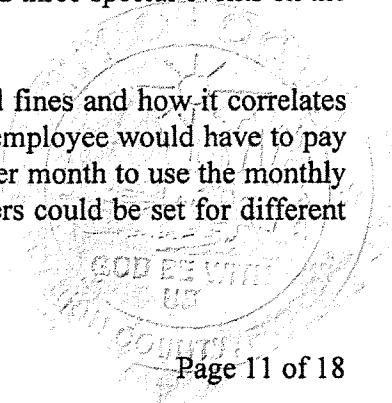
City Manager Nugent explained that staff met with the DDC (Downtown Development Council) and DBA (Downtown Business Alliance) who requested the parking fines be increased and better enforcement of the two-hour metered parking limit be provided.

Council member Guinn inquired about the time frame in which the tickets are issued. Recreation & Parks Director Pritchard replied it is a rolling six months.

Council member Kay asked what is the main objective. City Manager Nugent responded to free up two-hour parking because of habitual offenders.

Mike Franco, President of the DBA, explained the DBA chose to deal with, shuffling and parking in time limited areas. Mr. Franco said the City could not offer free parking around the square with a new parking garage that will charge a fee. Mr. Franco explained his best three business days at his store were on the same days as the City sponsored three special events on the Square.

Council member Kay inquired about the logic behind the meters and fines and how it correlates to a projected cost of the parking garage. Mr. Franco responded an employee would have to pay between \$35 to \$48 per month at parking meters verses \$22 to \$30 per month to use the monthly leased space. Recreation & Parks Director Pritchard added the meters could be set for different timetables according to location.



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Council member Rich inquired what would happen if the parking fines are not paid. Recreation & Parks Director Pritchard replied the car is fitted with a boot that immobilizes the car, and the overall collection rate recovers 75% to 80%.

Council member Kay inquired about parking rates. Recreation & Parks Director Pritchard responded it is currently 25 cents per hour.

President Owen inquired if there is enough employee parking Downtown. Mr. Franco replied yes, because the City leases the Sprint parking lot for parking, which is usually empty. He added that once construction begins on the Sprint site, there probably will not be enough parking.

President Owen suggested the City tow vehicles after the fourth offense. Council member Ruse said it is not a good idea to enter into negotiations with a third party to tow vehicles and the boot is less expensive for citizens.

President Owen asked if there would be enough employee-parking one-year from now. City Manager Nugent responded yes.

There being no further discussion from Council or the audience, the motion to adopt carried unanimously upon roll call vote.

Approved/Council member Rich moved and Council member Guinn seconded approval to submit a grant application to the State of Florida, Division of Cultural Affairs to receive \$30,000 in funds toward the renovation of the courtyard at the Brick City Center for the Arts. City Manager Nugent said if Brick City Center for the Arts applied for grant funding, they could receive funds to help renovate the courtyard. However, if the City applies for the grant, the MCA (Marion Cultural Alliance) will do a cash match. City Manager Nugent commented that if the Brick City Center ceases from being a cultural facility, the MCA would pay its prorated share that the State requires.

Council member Rich inquired about the deadline for the application. Community & Business Development Manager Mondell replied it is due by the end of June, and MCA and City Council would have to agree on the design.

There being no further discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Council member Guinn left the Council Chamber at 9:12 p.m.

Introduced/Resolution No. 2006-60, appropriating funds for \$169,765 for the construction of Runway 36, Takeoff Pavement and Taxiway Extension Project at the Ocala International Airport. Council member Kay introduced Resolution No. 2006-60 entitled, "A RESOLUTION AMENDING THE FY2006 BUDGET TO APPROPRIATE ADDITIONAL FUNDING FOR THE CONSTRUCT RUNWAY 36 TAKEOFF PAVEMENT AND TAXIWAY EXTENSION PROJECT AT THE OCALA INTERNATIONAL AIRPORT."

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Approved/Council member Ruse moved and Council member Kay seconded approval of the Pipeline Crossing Agreement with CSX Transportation Railroad for the construction of an eight inch gravity sewer crossing at M.P. 738.37 (CSX Railroad between Southwood Villas and Suncrest Subdivisions). President Owen inquired if they are using Ductile or PVC pipe. City Engineer Phillips replied the railroad requires ductile iron pipe.

There being no further discussion from Council or the audience, the motion to approve carried with Council members Ruse, Kay, Rich and Owen voting aye. Council member Guinn was not present upon roll call vote.

Council member Guinn returned to the Council Chamber at 9:15 p.m.

Approved/Council member Rich moved and Council member Guinn seconded approval to award the piggyback contract with the City of Jacksonville Beach for a maximum amount of \$300,000 to Advanced Underground Imaging (AUI) for the Infrastructure Pipe Cleaning and TV Inspection Services. City Engineer Phillips explained AUI is contracting with Jacksonville Beach, which the City can piggyback on, and it is a better contract than the City had in 2004.

There being no discussion from Council or the audience, the motion to approve carried with Council members Rich, Guinn, Kay and Ruse voting aye, and President Owen voting nay.

Withdrawn/Pulte Homes to change Cimarron from a private gated community to a public access community. Council member Ruse asked how many lots have been sold at Cimarron. Greg Clark, representing Pulte Homes, replied none of the 129 lots have been sold because they have not gone up for sale yet.

Council member Kay asked how many access roads there are. City Engineer Phillips replied one and explained that the City changed the code a few years ago to require private roads be built to City road standards.

Council member Kay said he wants two access points and inquired about options the City has to require two access roads. City Engineer Phillips replied the one access point was allowed prior to the City changing the code.

Mr. Clark requested this be withdrawn in order to study the plan to gain a secondary access point.

Council concurred to withdraw this request.

Approved/Council member Rich moved and Council member Ruse seconded approval of the Purchase of Right-of-way (ROW) and a Temporary Construction Easement (TCE) (Parcel No. 137) for a settlement amount of \$93,580 necessary as part of the NW Martin Luther King, Jr. Avenue Improvement Project Phase II/The Life Center Church, Inc.

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There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Rich moved and Council member Guinn seconded approval of a contract for the Purchase of a Right-of-way, (ROW) Guy Anchor Easement and Temporary Construction Easement (TCE) (Parcel No. 131) for a settlement amount of \$35,000 necessary for the continuation of the NW Martin Luther King, Jr. Avenue Improvement Project Phase IB/William Steven Bray and Karen Sue Bray. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Council recessed at 9:33 p.m.

Council reconvened at 9:37 p.m.

Approved, Options 1, 4 and 8/Council member Guinn moved and Council member Rich seconded approval for staff to develop an ordinance which will adopt a \$12 fire services fee and an impact fee of \$386 to be implemented effective October 1, 2006. Finance & Administrative Services Director Corley explained the history on development of the fee and projected a deficit of \$10,000,000 for the upcoming fiscal year. Next year's street resurfacing program is being suspended, which brings the deficit projection down to \$8,400,000. These proposed three options would provide \$5,500,000 in additional revenue, allow the City to remain competitive with the County, and impose an impact fee to address growth to pay for itself.

Finance & Administrative Services Director Corley presented a series of recommendations and talked about equitable sharing of costs by using Option 1 to maintain the current service level. He explained Option 4 would enact the fire fee of \$12 per residence to support about 44% of fire cost and increase the fee incrementally. This fee benchmarks the County's current proposal. Finance & Administrative Services Director Corley explained Option 8 adopts a fire impact fee that would restrict the revenue to be used for fire services infrastructure. He recommended a combination of Options 1, 4 and 8.

Council member Guinn inquired how to answer a constituent's question of how can the City charge another \$12 when they are already paying for fire service through ad valorem taxes. Finance & Administrative Services Director Corley replied the ad valorem tax is insufficient to support the fire department budget.

Council member Guinn asked if this would be charged on vacant property. Finance & Administrative Services Director Corley responded no.

Council member Guinn inquired what the rate would be for commercial buildings. Finance & Administrative Services Director Corley replied it is calculated on the ERU (Equivalent Residential Unit) based upon square footage.

Finance & Administrative Services Director Corley explained the recommendation is geared towards governmental units that are tax exempt such as the County, the federal government and

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the school board. This would be a way for those entities to pay a portion of the costs for providing those services.

Mayor Ewers inquired about ISO (Insurance Services Office) Ratings in conjunction with the monetary benefit. Finance & Administrative Services Director Corley replied it pertains to the ability to retain insurance coverage. City Manager Nugent explained some insurance companies group ISO ratings in a different manner.

Council member Ruse said his major concern is tax revenues will be up 8% in the County and asked if that would affect the budget figures. Finance & Administrative Services Director Corley replied there is a \$8,400,000 budget deficit that includes a 6% growth in ad valorem.

Council member Ruse asked if the City would be able to purchase the fire stations with the impact fee increments. Finance & Administrative Services Director Corley replied yes, through a combination of these fees.

Council member Ruse expressed concern with the legalities of the fee and requested this be approved subject to legal review. City Attorney Gilligan replied he is checking with other city/county attorneys that have proposed something similar to this.

Council member Kay inquired how much money the City would collect in the first year of collecting the fire assessment fee. Finance & Administrative Services Director Corley responded about \$5,500,000, which would leave a budget shortfall of \$8,000,000.

Council member Kay said the City had an ad valorem in Fiscal Years 2005/2006 that showed \$18,066,000 and now the City is projecting an ad valorem that is lower. Finance & Administrative Services Director Corley explained \$16,900,000 is dedicated to the general fund.

Council member Kay said that assuming this includes fire and police, it calculates to be about \$3,000,000 per mill so this fee would equate to almost a two mill increase. Finance & Administrative Services Director Corley explained if the City adds the fee, there would be \$2,500,000 in costs for the City to cut out of the proposed budget. He stated there is no fat in the budget except for a proposed raise for employees, which may have to be cut.

Council member Kay said he believes the budget is as lean as it can be but staff needs to look at the entire budget including EIF (Economic Improvement Fund) and other programs where the City could probably save \$500,000. Council member Kay was concerned about stacking up additional costs to live in the City. Finance & Administrative Services Director Corley responded the millage rate went up to support EMSA (Emergency Medical Services Alliance). He said the County agrees with the EMSA increase, but it would require that the City pay \$1,300,000, which the City can not afford.

Council member Kay cautioned Council to be aware of what the dollar amount actually means and what the one mill is in the form of dollars. Finance & Administrative Services Director

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Corley commented that if the City could justify giving some relief, give it on the millage rate side and not the fire services side.

President Owen asked how much longer the City has left on its agreement with EMSA. Finance & Administrative Services Director Corley responded about two and one half years.

Council member Guinn inquired what would happen if the City chose to cut ties with EMSA. City Manager Nugent replied the City is required to provide a two-year notice if it cuts ties with EMSA, therefore, Council would have to make a decision within six months. Finance & Administrative Services Director Corley added State Statute requires that the County provide the services.

Council members Ruse and Kay discussed how this compares to increasing the millage rate.

Council members Ruse and Rich pointed out the City is still providing better service for less costs and they would not support anything without an impact fee.

Council member Guinn asked if there are any places within the City that are not provided with electric service by OEU (Ocala Electric Utility). Finance & Administrative Services Director Corley replied yes, there are a few. Staff has talked with Sumter Electric and Clay Electric about collecting this fee for the City from those customers.

Council member Rich spoke in support of Options 1, 4 and 8 because the cost of everything is going up. She commented that there is no fat in the budget and that staff has done a great job with the budget. President Owen said staff has done a good job on the budget, but there needs to be some mechanism to pay for items.

Council member Kay stated he would only support Option 8.

Council member Guinn moved and Council member Rich seconded to approve Options 1, 4 and 8.

There being no further discussion from Council or the audience, the motion to approve carried with Council members Guinn, Rich, and Owen voting aye, and Council members Kay and Ruse voting nay.

City Manager's Report. City Manager Nugent distributed the reminders list.

The Airport Advisory Board requested a work session regarding Capital Improvements/City Manager to report back with date.

A work session regarding the revised FEMA (Federal Emergency Management Agency) flood maps will be held on June 27, 2006 at 12:00 noon in the Council Chamber.

The June 13, 2006 Council work session has been cancelled.

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Reports of Committees. Mayor Ewers reminded Council of the EDC (Economic Development Council) luncheon tomorrow to discuss downtown.

Approved/Council member Ruse moved and Council member Rich seconded approval of the NW Martin Luther King, Jr. Street Condemnation, City of Ocala, a Florida municipal corporation vs. Vernon M. Edwards, et al., Parcels No. 102 and 103, Vernon M. Edwards. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Council member Rich moved and Council member Kay seconded approval of the NW Martin Luther King, Jr. Street Condemnation, City of Ocala, a Florida municipal corporation vs. Leonard Barriner, Sr., et al., Parcel No. 105, Whitfield and Minus. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Approved/Consent Agenda. Council member Guinn moved and Council member Rich seconded to approve the Consent Agenda.

There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

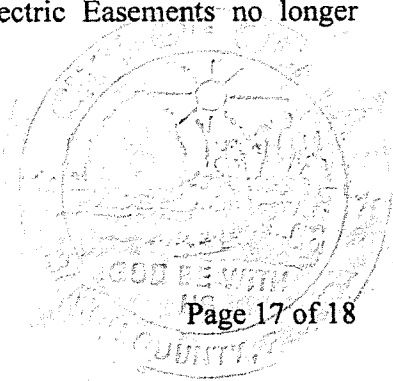
CONSIDERATION OF MINUTES OF PRIOR MEETINGS

1. Approved/April 18, 2006 Work Session Minutes
2. Approved/May 2, 2006 City Council Minutes
3. Approved/May 9, 2006 City Council Minutes
4. Approved/May 16, 2006 City Council Minutes

GENERAL

1. Approved/contract for the purchase of a Temporary Construction Easement (TCE) (Parcel No. 31) for a settlement amount of \$7,200 necessary as part of the SW 20th Street Project/Robert G. Mofford and Susan Mofford.
2. Approved/Contract for the Purchase of a Temporary Construction Easement (TCE) (Parcel No. 39) for a settlement amount of \$3,000 necessary as part of the SW 20th Street Project/John Scott and Jeanetta P. Scott.
3. Approved/Release of Easement document, releasing three Electric Easements no longer needed by Ocala Electric Utility (OEU).
4. Approved/out-of-state travel/Ocala Electric Utility Department.

RESOLUTIONS



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1. Adopted/Resolution No. 2006-57, appropriating funds for \$246,601 for the SW 20th Street, SW 44th Avenue and NE 14th Street Road Construction Projects (Introduced 5/23/06 by Council member Guinn).

BIDS AND FINANCIAL MATTERS


1. Approved/Change Order No. 1 for \$11,176.64 to Milsoft Utility Solutions for the outage management system software installation or training fees/Requisition No. 05TD35A.
2. Approved/piggyback from the City of St. Petersburg with American Water Underground Infrastructure, Inc. for \$15,000 for sanitary sewer cleaning services.
3. Approved/award Bid No. B-2996 to Garden World Nursery and Landscaping for \$34,193 for the planting of trees destroyed by hurricanes in nine municipal building locations and to add or fix irrigation in seven locations.
4. Approved/purchase of Bag Liners and Paper Products from five vendors for an estimated amount of \$30,000.27 necessary to maintain warehouse inventory.
5. Approved/purchase of PVC Pipe and Accessories from two vendors for an estimated amount of \$76,337.96 necessary for various upcoming jobs and to maintain warehouse inventory.
6. Approved/purchase of luminaries & aluminum poles from Hughes Supply for an estimated amount of \$61,637.75 necessary for upcoming jobs and to maintain warehouse inventory.

Approved/Council member Ruse moved and Council member Rich seconded approval of a Second Hand Dealer Application for Daniel Jones (St. Marks Treasure Chest) at 936 NE 19th Street. There being no discussion from Council or the audience, the motion to approve carried unanimously upon roll call vote.

Meeting adjourned. There being no further business to come before Council, the meeting adjourned at 10:37 p.m.


Valerie J. Forster, City Clerk


Daniel Owen, Council President

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BE A TRUE AND ACCURATE COPY

CITY CLERK

**OCALA CITY COUNCIL
WORK SESSION MINUTES
AUGUST 9, 2006**

Meeting Statistics: The Ocala City Council conducted a budget work session meeting in the City Manager's Conference Room, 151 SE Osceola Avenue, on Wednesday, August 9, 2006, beginning at 8:45 a.m.

Elected Officials:

Daniel Owen, President	Present
Mary S. Rich, President Pro Tem	Present
Kent Guinn, Council member	Present
Kyle Kay, Council Member	Present
Charles Ruse, Jr., Council Member	Present
Randall Ewers, Mayor	Present

Municipal Officials/Others Present: City Manager Paul Nugent, Assistant City Manager Bill Looney, Assistant to the City Manager Astrida Trupovnieks, City Clerk Valerie Forster, Director Finance and Administrative Services Don Corley, Senior Budget Analyst Karen White, Budget Analyst Rita Conn, and the news media attended the meeting.

Budget Work Session: City Manager Nugent presented the Fiscal Year 2007 Operating Budget and Capital Improvement Program for council review. The proposed budget appropriation of \$388,335,396 will essentially support current service levels and is funded with a one-half (1/2) mill reduction in the City's millage rate. The focus is on public safety, health care, pension, and the need to upgrade public utility and traffic transportation infrastructure. Fundamentally, this budget provides the necessary resources to fund our goal of protecting the quality of life of our citizens. This budget features a one half (1/2) millage rate reduction, 29 new employee positions, an enhanced annexation program, enactment of fire services and fire impact fees, funding to pay the City's share of ambulance services (EMSA) cost, and an allowance for pay adjustments to maintain a competitive position in the employment market.

Finance and Administrative Services Director Corley advised the proposed budget actually reflects a 7% reduction from the current budget. This reduction is the result of unexpended budget funds that will be carried forward to the FY 2007. Economic trends and issues that affect the local community were discussed. These issues include the national economy, which is affected by the costs of fighting wars, the federal budget deficit, and rising interest rates, all of which will negatively affect all segments of our economy. Nationally the housing and mortgage industries are weakening which affect the tax base. However, Ocala has yet to see signs of a weakening housing bubble. City tax base has grown substantially in the last year, increasing slightly above 21%. This increase is attributed to new construction, annexation and reassessment of commercial and residential property values that are tied to market values. Ocala is the only city of comparable size that had an increase in the number of residential units sold in a one-year period. Future tax base growth will not continue at this rate due to an increasing consumer price index of more than 4%. Consumers are paying higher prices for energy and housing needs, based on the rising price index. City financial strategy should be guided by principals that are sensitive to cost of government for all citizens, payment for fair share of services received, an efficient and productive workforce, and recognition of the fact that government cannot be responsible for everything for everyone.

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Mr. Corley reviewed relative issues that would allow the city to pursue its stated principals. The Ocala Fire Department funding, proposed expansion of service, and the ability to maintain its quality ISO Rating was presented. Council recently approved fire service fees that should help maintain the current level of service. The impact fee is designed to have growth pay for itself. Water and Sewer Department is doing an excellent job to help maintain the ISO Rating. Twenty-nine new employee positions will be added, and seventeen of those will be firefighters for the new station. The fire fee is competitive with other cities, and compares well to Marion County. County fees were raised to \$166, which is \$22 more than the proposed City fee.

Mr. Corley reviewed the need for revenue to support the Emergency Medical Service Alliance (EMSA). The City needs to look at avenues to share this cost. Council may need a work session to determine whether to renegotiate the EMSA contract, since next year will be the fourth and final year. Options of the City are either to share the costs by population count, or get out of contract altogether. Marion County has the responsibility of providing ambulance service.

President Owen asked if a model system exists in the state for ambulance services where the cost of service is covered. He stated the current council has a responsibility to councils of the future, and feels strongly that the City should get out of the ambulance service business.

Council member Guinn spoke regarding his personal experience with EMSA service, which Blue Cross does not cover. He also would like to explore ambulance service as a private enterprise within the City.

Mr. Nugent advised that Blue Cross is targeting smaller ambulance services across the country, since the small businesses cannot afford to take them to court. Currently there is an effort to change the statute that would reimburse EMSA directly for their service. EMSA costs are up however their revenues are down. EMSA will have a strategic planning session in the fall and the City needs a representative to keep ambulance service within the City limits.

Mr. Corley advised that Leon County has an MSTU and uses the pro rata share for its ambulance service. Tallahassee has 71% of the population of Leon County, compared to Ocala at only 16% of Marion County.

Council member Ruse suggested that Marion County should assume responsibility for providing ambulance service. Leon County ambulance service operations should be researched for possible emulation by the City of Ocala.

Mr. Corley reviewed the proposed Marion County one-cent sales tax. This tax proposal will be on the General Election Ballot for November 2006, and be imposed for seven years with projected revenue of \$398 million. A negotiated interlocal agreement would provide 21.3% percent, or \$64 million for new City projects and \$21 million for maintenance related projects. The City has no other source of funding to improve the transportation network, therefore Council and staff should be advocates for the sales tax.

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Mr. Corley advised that voluntary annexations have helped to increase the city population to 52,000 residents. However, referendum annexations are needed to facilitate our ability to provide urban services, as well as increase the population and tax base for the City. A report will be given in September regarding the survey to determine areas that are eligible for annexation.

Mr. Nugent explained the Planning Department has held public meetings with enclave residents to present correct annexation information. Voluntary annexations are scheduled for completion before October 2006 and involuntary before February 2007. The City has prepared an interlocal agreement and is waiting approval by Marion County. Funds have been budgeted for an annexation referendum in February 2007.

President Owen asked that maps be provided that would indicate the areas being targeted for annexation. Mr. Nugent advised that the Lake Weir area would be a primary target area for annexation due to the previous fire casualty.

Council member Guinn suggested that the entire urban service area should be annexed which would complete the process.

Mr. Corley explained that after December 15, 2006, Governmental Accounting Standards Board (GASB) Rule 45 would require government entities with over \$100 million annual revenue to begin accounting for their other post-employment benefits (OPEB). This primarily will include retiree healthcare expenses to be listed as a liability. The current system is "pay-as-you-go", however while the unfunded OPEB liability is not required to be amortized under GASB 45, failure to make the unfunded actuarial accrued liabilities (UAAL) payment will only add to the size of the liability. Unmeasured liabilities will be reported in both the balance sheet and notes to the financial statements, and in required multi-year scheduling of funding progress.

Council member Guinn asked what the city contributes toward health care for its retirees. Mr. Corley stated the city pays \$100 per month to each retiree to help defray health care costs.

Mr. Corley stated the general fund with its high rating by the bonding agencies, has allowed the city to maintain a sound financial foundation. The goal has been to obtain a balance of 15% of expenditures in the general fund for emergencies and unforeseen operational expenditures. This fund is supplemented by annual contributions and earned interest on investments. This goal was achieved in 2003 and 2005. However, due to additional unbudgeted funding to the fire pension plan and a portion of recent hurricane related expenses, a 13.6% fund balance is projected at the end of the next fiscal year.

Council member Ruse wants to see 15% general fund balance maintained and not reduce the millage rate.

Council members Kay and Guinn concurred that responsibility to maintain a budget reserve rests with city council. Taxpayers expect frugal budget management to maintain sufficient reserves.

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Mr. Corley emphasized this is a no-frills budget and discussed budget balancing strategies. A higher bond rating increases the ability for funding at a better interest rate. The Electric Utility has provided a source for necessary funding. New employee positions were added to compensate for workload created by city growth. He also stressed the need to be sensitive to citizens in the process of raising revenue, and that unjustified revenue would be refunded. Unbudgeted funding to the fire pension plan is the primary cause for reduction in the general fund reserve.

Mr. Looney reiterated that \$1.5 million was expended from the general fund to support the fire pension plan. This type of negative impact on the budget must be stopped.

Council member Guinn asked about funding for previous hurricane damage. Mr. Corley explained that money was borrowed from the Electric Utility to fund the expense of hurricane cleanup. However, FEMA reimbursement for expenditures was used to repay the loan.

Council member Kay also brought up the major expenditure for EMSA. This large expenditure, in conjunction with the fire pension plan has produced a major impact on the general fund.

Mr. Corley spoke regarding the strategies used to balance the general fund. A transfer of funds from the Electric Utility in accordance with the approved policy will be continued. The system rates are being reviewed in an effort to have expenditures balanced against current revenue. It is anticipated that Council will review this issue in an October workshop. The budget being presented proposes reducing the current millage rate one-half mill. The Water and Sewer Utility will transfer \$500,000 to support general fund expenditures. Water and Sewer rates also are scheduled for review in October. The fire service fee is equitable for all the citizens to share the costs.

Council member Ruse asked for a rate chart for comparable cities that would incorporate their fire service fee revenue. Mr. Corley assured council this information would be provided.

Mr. Corley explained that area tax growth was the result of commercial and home sales. State law allows no more than a 3% annual property tax increase. There is evidence that the real estate market is slowing, therefore the city budget should be based on property tax revenue.

Council member Kay would like to encourage area growth by reducing the cost of building permits. Every effort should be made to promote and continue a robust real estate market.

Mr. Nugent explained the change that was made three years ago in the impact fee structure. The primary purpose was to increase revenue to finance needed infrastructure due to city infill growth.

Council member Ruse discussed ideas to promote rehabilitation of existing buildings, thereby increasing property values and tax revenue. He suggested a work session with builders and developers, to explore ideas and target areas that have infrastructure and buildings suitable for rehabilitation.

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Council member Ruse asked if impact fees are imposed in the CRA. Mr. Nugent advised there are impact fees, however the water and sewer fee is usually waived. Outlying areas of the CRA need infill to promote revitalization. The city has contributed to this goal by forming partnerships for growth in the community as well as installing additional infrastructure.

Council member Guinn asked about the status of the Citizens Initiative bill. Mr. Nugent advised that the Governor is currently investigating insurance rates and basic taxes.

Mr. Corley continued his presentation regarding the recently approved fire services fee. The implementation date has been changed to January 1, 2007, which will give the citizens an additional three months reprieve before the tax is levied.

Mr. Corley advised employee health care costs would increase by 21%. The city will pay 14% and the employees will absorb the additional 7% increase. Twenty-one new employee positions are funded by the general fund. This reflects an overall improvement in employee efficiency.

Council member Kay inquired about employee health savings accounts. He advised that his company has taken this route, which provides savings to both the employee and the employer.

Mr. Corley reviewed EMSA funding. The city negotiated costs with EMSA and was successful in reducing the current year costs.

Mr. Corley advised the transportation program was suspended, contingent upon the passage of the proposed sales tax. However, next year will require a minimum \$2.1 million for the program. That combined with the proposed sales tax will provide sufficient funding.

Mr. Corley reviewed the budget items that were not funded by the proposed budget. These items include expansion of the Building Department facility to house the Planning Department, which would provide the ultimate "one-stop-permitting", additional funding for the employee pension plan, and matching funds to support the airport improvement. The city auditorium, built in 1936, is facing major renovation or demolition due to its structural condition, but funding was not included in this budget.

Council member Rich stated the city auditorium should not be rented again due to its structural deterioration. Council members concurred that the auditorium is unsafe for public use, and should be closed pending a decision of action to be taken.

Council member Guinn stated he is not in favor of renovating the city auditorium, and asked for a history of previous expenditures. He would like to discuss the subject of building a civic center for the community.

Mr. Corley spoke about worker's compensation and the need to add an additional \$500,000 to cover costs. Risk Department will review and recalculate the methodology for determining liability costs. Since the city is self-insured, funding must be provided to cover 75% of the

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liabilities. Employee safety must be addressed in all departments to diminish the volume of claims.

Council members Ruse, Kay and Guinn discussed the need to establish a mature system that provides better calibration and administration of the entire workers' compensation program.

Mr. Corley advised the City has options for budget consideration. One option would be to continue the current millage rate, which would resolve some of the issues. This revenue could be used for bond financing purposes, which would provide funding for priority projects.

Council member Kay suggested that the current millage rate should not be reduced, providing the option of obtaining bond monies to finance capital improvements.

President Owen asked for explanation to justify or determine the actual priority for capital improvements. He asked if the Building Department addition could be justified as a need, or would it only provide a convenience for the public. Mr. Nugent explained the addition would provide efficiency, however it is not a top priority. Council member Ruse expressed the opinion that builders and developers would benefit the most from the convenience. The majority of taxpayers would not be ready to support this addition to provide a convenience for builders and developers. Council members Kay and Guinn concurred that the Building Department addition would not be justified as a priority at this time.

Mr. Corley reminded council of the option available to fund some of the unfunded items, such as maintaining the ½ mill to support the debt service of a bond program or a combination of bonds and "pay-as-you go", or reduce the millage ¼ mill to support a smaller bond program.

Mr. Nugent advised that airport issues were an important priority to be considered.

Mr. Corley addressed the airport priority. Grant money is available to which bond financing could provide \$5 million to implement the improvements. The finance rate and bond reduction payment could be determined and then millage rate could be adjusted accordingly to produce the required revenue.

Council member Ruse expressed concern about the Code Enforcement Division and wants it to be more aggressive in enforcing the Code.

Mr. Corley reviewed the department service level highlights for the Building, Public Works, IT, Police, Water and Sewer, Planning Recreation and Parks, and Electric. Code Enforcement will be reinforced by the addition of one new position to expedite the elimination of code violations.

The Police Department will get one additional position for a Communications Technician. The IT Department is assisting OPD in its search for a system to upgrade the current dispatch equipment. Initial request was for five new police officer positions; however, with a change to

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twelve-hour shifts this need was eliminated. It is recommended to replace five in-car video cameras to record encounters with suspects in criminal cases, and provide recorded evidence.

Council members Rich and Ruse expressed opinions that additional police officers are needed due to city growth. Mayor Ewers suggested that with implementation of updated software additional officers would be available to police the city streets and provide increased public safety.

Mr. Nugent advised that after WRF #1 is closed one large lift station would remain at this site. Council member Kaye suggested this might be the time to relocate the Traffic Department to the City Complex

Mr. Corley advised that one new position is recommended for the Planning Department. The Special Projects Coordinator position is funded for \$50,845, and this position will coordinate annexation related activities.

Mr. Corley then discussed employee salary adjustments. The recommendation is for a 2.5% cost of living adjustment, effective October 1, 2006. Two and a half (2-1/2) percent is allocated for merit adjustments on each employee's anniversary date. These adjustments should provide income to keep pace with inflation and pay the additional cost for health insurance. The longevity bonuses will be retained in this budget. Allocation of \$25,000 is recommended to fund a comprehensive pay study. This study will keep the city competitive in the employment market and will include the police and fire departments.

The meeting was recessed at 10:50 a.m. and resumed at 11:05 a.m.

City Council: An allocation of \$25,000 is provided for special requests made to Council throughout the year. Council concurred that there is a need to have funds available to use for true emergencies and other discretionary uses. Council member Ruse cautioned this fund should be awarded with discernment. Mr. Nugent assured council that the availability of these funds would not be advertised; however, they would be available for emergency use. Council member Kay suggested that policy guidelines be established for certain types of funding for charitable organizations.

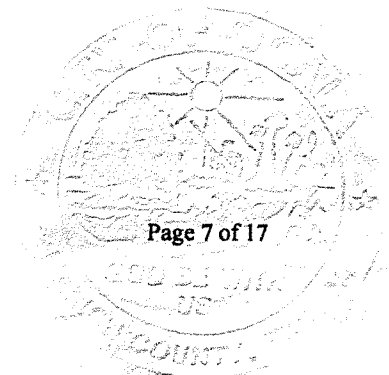
City Manager: City Manager Paul Nugent, Assistant City Manager Bill Looney, and Assistant to City Manager Astrida Trupovnieks

Budget accepted as presented.

City Attorney: Budget accepted as presented.

City Clerk: City Clerk Valerie Forster

Budget accepted as presented.



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Auditor: Auditor Eric Lewrenz

Budget accepted as presented.

Risk: Director Jim Dalke and Manager Benefits Administration Sheri Wiley

Risk Director Dalke addressed the topic of health savings accounts. Health savings accounts are costly; however, the City Attorney and Marion County use this system. The County has a \$750 employee deductible; however, they reimburse a portion of this cost. The high dollar claims are driving health costs upward. Wellness programs will be initiated to help employees improve their health.

Council member Guinn inquired as to how many employees meet their health insurance deductible. Ms. Wiley stated that a previous study indicated that approximately 40% of employees meet their deductible cost. Not all out-of-pocket expenses are applied toward the deductible, such as cost for an office visit. However, approximately 70% of employees have family health care coverage, which covers all member of the household.

Council member Kay inquired as to the current deductible amount. Mr. Dalke replied that is \$500. Council member Kaye suggested it be raised to \$1,000. He also stressed the fact that employees should understand the value of their health benefit. The health care issue should be reviewed and significant changes made to place more responsibility on the employee. Information on using a health care savings account system will be researched and information presented to Council.

Council member Ruse wants the City to be on the cutting-edge of information to help curtail escalating health care costs. He asked when facts and actual numbers would be available. Mr. Nugent responded the information should be available within a week.

President Owen asked Mr. Nugent to provide information necessary to pursue the goal of lowering City health care costs.

Finance and Administrative Services: Director Don Corley, Senior Budget Analyst Karen White and Deputy Budget Analyst Rita Conn.

President Owen opened a discussion about possible alternatives by which the City could withdraw its financial support of EMSA. Council needs to make a decision whether or not to continue its financial support to EMSA.

Council member Ruse suggested that using the MSTU process is a good idea, and added that the County should be notified as soon as possible that the City is considering withdrawing from the contract. It appears that the City would like to withdraw from this contract within two years.

Council member Guinn expressed concern whether the City could maintain control over charges that would be assessed Ocala residents. Another concern is whether the City would be allowed

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to operate its own ambulance service. He asked if the EMSA contract had a specific time notification to withdraw from the contract. Mr. Nugent responded that Marion County controls the ambulance service and previously would not allow the City to furnish service to its residents.

Council member Kay suggested the City should give EMSA notice, but try to remain a part of the board.

Mr. Nugent advised there is a September meeting regarding the future of EMSA. Council should hold a work session prior to the EMSA meeting to determine the course of action the City wants to take. EMSA knows that the city and one hospital will probably withdraw from the agreement. The City should seek assurances from the County that service will be maintained.

Council member Ruse suggested negotiating on EMSA, such as a reduction of the percentage of support. This would be a better way to approach the withdrawal process, and still maintain a working relationship. This issue must be intelligently negotiated to our best advantage.

Council member Rich expressed concern whether the city could maintain its seat on the EMSA board after it withdraws from the contract.

Council member Kay is in agreement to give notice that the City of Ocala will be withdrawing from the EMSA contract. City residents still need representation since they are residents of Marion County.

President Owen stated this is a political issue and the city does not have enough voters to affect the election of county commissioners. The County has the power to control the ambulance service and assess rates for revenue.

Mr. Nugent advised he would start the process to withdraw from the contract and still maintain a seat on the EMSA board. This will allow time for readjustments for both the City and County. Marion County has a mandate by the State to provide ambulance service to the entire county.

Mr. Corley advised that the city would need to give a one-year notice of its intentions to withdraw from EMSA.

Purchasing Budget: Director Darryl Muse

Council member Guinn asked for clarification regarding the executive car allowance. Mr. Corley advised this allowance is allocated for department heads and deputy directors.

Human Resources: Director Sandra Wilson and Deputy Director Melody DiGiugno

Council member Guinn inquired about the allocation of tuition reimbursement funding for employees. Ms. Wilson stated that each department budgets for tuition reimbursement.

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Council member Guinn asked what role Human Resources played to determine workers compensation benefits. Mr. Corley advised they worked in an advisory capacity on the claims.

Planning Department: Director Tye Chighizola and Director TPO Greg Slay

Council member Guinn asked where the decorative lighting would be located. Mr. Chighizola responded that additional lampposts would be installed at the point where the current ones end.

Council member Ruse asked what duties the Special Projects Coordinator would assume before October 1 and after annexations are completed. Mr. Nugent stated that this person would assist with other planning projects as well as annexations. Mr. Corley advised that annexations would be a continuing project until the city reaches approximately 82,000 residents.

Building Department: Director Jacques Skutt and Deputy Director Dave Branum

President Owen asked about weekend code enforcement efforts. Mr. Skutt replied that efforts are concentrated on removing illegal signs and checking licenses on mobile vendors during weekend duty.

Mr. Branum advised that on the weekend violations can be reported to OPD. OPD will check the vendors and pass the information to Code Enforcement. Council member Ruse asked if the city is aggressively pursuing demolition projects and proceeding with property foreclosures. Mr. Nugent responded that the Assistant City Attorney Eric Gifford is processing foreclosures and the numbers have increased significantly.

Mr. Skutt advised that collection of assessed code violation fines has increased, and more people are paying the property clean-up fines.

Council member Guinn asked how long it takes a violation to be corrected. Mr. Skutt stated the process is approximately one month. The process is currently being reviewed to shorten the time to two weeks. The first letter of notification would be eliminated, and a notice of public hearing sent to the property owner.

Police Department: Chief Sam Williams, Deputy Chief Greg Graham, and Fiscal Administrator Diana Archambault

Discussion took place on the request for an in-house attorney. Chief Williams explained legal advice is needed immediately in some instances and legal work could be processed in a timelier manner with in-house counsel. He added other avenues are being investigated to provide legal services without incurring cost to the budget.

Council member Guinn suggested that additional funding to provide needed legal services be added to the budget. Council member Ruse commented that the most cost effective solution would be to hire another police officer to provide legal services.

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Mr. Corley discussed additional compensation for officers who stay abreast of the legal system and gain the expertise to deal with legal issues in the field. Deputy Chief Graham advised this idea was presented but was not readily accepted by the officers. Officers indicated more interest in a personal evaluation system based on performance objectives rather than the current merit system.

Chief Williams spoke about hiring a retired police officer that is also an attorney from the Dade County area for approximately \$50,000. Mr. Corley suggested reviewing the request to determine if there is a way to provide a solution to this issue.

Council member Rich asked how many video cameras does OPD need. Deputy Chief Graham explained that 25 cameras are needed to finalize the program but that OPD would accept the five proposed in the budget. Council member Ruse remarked he would rather purchase video cameras than fund an attorney position.

Council member Rich then inquired about the mobile radios. Deputy Chief Graham responded OPD is phasing in digital radios.

Council member Guinn asked about the need for more officers. Deputy Chief Graham responded OPD has gone to 12-hour shifts so the number of officers is sufficient at this time.

Council member Rich requested funds be found to provide five more video cameras.

Discussion took place on the need for additional laptops for OPD vehicles. Council member Rich requested that funds also be found to provide ten laptops.

Mr. Corley explained OPD also has need for other things such as a Computer Aided Dispatch/Records Management software system.

Council member Guinn asked how the Computer Aided Dispatch system would benefit OPD. Deputy Chief Graham explained the new CAD system software package is all-encompassing and has capabilities to map a crime scene to include the offenders, and to populate the ticket fields.

President Owen asked for confirmation that the new CAD system would perform as indicated. Deputy Chief Graham explained the process used to determine this is the best system for OPD. He added this system scheduled for demonstration on Monday, August 14 at 1:00 p.m., and those interested were invited to attend.

Mayor Ewers advised the new system, unlike the current one, works as an independent system without a need for additional support to produce data needed. He made the point that the goal is to transition more officers to work the city streets. Deputy Chief Graham added that staff reduction would not be sworn police officers.

President Owen asked when the new system would be implemented. Mr. Corley when the process is completed a contract will be presented to Council.

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Fire Department: Chief Dan Gentry and Deputy Chief Bill Mallory

President Owen asked if promotions would be internal to staff Station #6. Chief Gentry replied the practice is to promote from within the ranks. However, there have been chiefs hired outside the ranks.

Council member Guinn inquired about the operation of the fire college. Chief Gentry responded the fire college is run by the State through CFCC. The initial staff for Station #6 will not be all new employees. The goal is to have dual certification for all personnel, however; this may not be possible at the time the station goes into operation. Twelve new firefighters will be recruited, some of which may not have dual certifications when hired.

Council member Rich asked how many African-American firefighters are employed by the City. Chief Gentry replied six and added not many applications are received.

President Owen expressed Council appreciation to Chief Gentry and Deputy Chief Mallory for their efforts in dealing with union issues. Chief Gentry responded that the firefighters are still performing their duties with a positive outlook and a great level of care.

Engineering Department: City Engineer Bruce Phillips, Deputy City Engineer Ed Earnest, Deputy City Engineer Tom Young, Fiscal Administrator Barbara Moullett, and Airport Director Matt Grow.

The proposed capital improvements program for the Airport will be discussed during budget wrap-up hearings.

Council member Ruse asked construction of more T-hangers construction. He added this should high on the priority list.

Mr. Corley explained the T-hangers would be a revenue-producing project for the airport. The City could finance the new T-hangers and obtain reimbursement for the construction costs from FAA grant funds.

Mr. Phillips advised that airport safety issue projects also are included in the \$5 million to be appropriated for the airport. When the first big commercial lease is finalized, the airport will be on the fast track for expansion and growth.

Council member Guinn agrees the airport facility is becoming productive and moving forward. Several projects need to be accomplished, such as the control tower, the terminal building, and T-hangar construction.

Mr. Grow advised that the commercial ground lease is with EDC, and they have the responsibility to setup the next meeting with the proposed lessee.

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Mayor Ewers inquired about the need for a customs agent. Mr. Phillips responded that Ocala does not have an agent at the time but do maintain a foreign trade zone designation.

Mr. Grow pointed out that an agreement for a customs agent would have to be established with Leesburg to provide Ocala a custom agent as needed. Leesburg agreed with an arrangement; however, the customs agent did not.

Mr. Nugent explained that previously Ocala had a customs agent who retired. Ocala contacted Leesburg to establish an agreement to share one agent. At that time, they were not responsive to such an agreement. Shortly thereafter, Leesburg requested a customs agent for their airport and The Villages.

Council member Guinn asked when a new terminal building could be built and about the feasibility of a contract with FedEx at the airport. Mr. Phillips replied it would take one to two years to construct a terminal construction at a cost of about \$5 million.

Council member Ruse was adamant about securing funding to begin construction of the T-hangars. OEU could provide the funding and be repaid when the grant funds are obtained. The T-hangars would be a great revenue source after the first two years of operation.

Council members Kay and Guinn agreed that T-hangar construction should proceed, with possible funding by OEU. Mr. Grow advised the total cost to build the hangars would be \$650,000. A \$520,000 grant would be available from FAA in 2010, and the grant funds could be used to repay OEU.

President Owen asked for a consensus regarding beginning construction on the T-hangars. Council concurred that construction should begin as soon as the funding is secured. Mr. Nugent stated that staff would review different funding sources and determine the best source to finance the T-hangar construction.

Council member Guinn asked for a status report regarding the performance of the sludge dryer, and about aerial mapping of the city. Mr. Phillips advised the sludge dryer is functioning very well and plans are being finalized to purchase the second dryer. Every four years the city updates the aerial maps, and remapping is scheduled for next year. The aerial maps will be available on line for public access.

President Owen inquired about the number of years remaining on the debt service for the two swimming pools. Mr. Corley replied the original bond was for twenty years, and there are sixteen more years of debt service.

Council member Ruse asked if the pools were self-supporting. Mr. Looney advised the pools are an asset to the community and only operate four months of the year. This window of operation does not cover the costs of operation.

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Recreation and Parks: Director Dave Pritchard, Deputy Director Tom Bolinski, Chief Parks Administrator Kathy Crile.

Council member Guinn inquired as to the process of closing the trailer park.

Mr. Pritchard explained that State statutes have changed, which will make the closure easier and less expensive for the city. There are 59 park model units, of which each owner would receive a required payment of \$2,000 for moving expenses. The park occupancy is approximately 95 units, of which 28 are seasonal units. The City has no responsibility to assist owners of travel trailers, since they have other places to live.

Council member Ruse inquired about the attrition rate for occupants of the trailer park.

Mr. Pritchard replied that once a unit is on a lot, it cannot be removed. Relatives of a deceased occupant will just resell the unit in place. However, the City is consistently raising the lot rental rates, which is currently \$85 a month.

President Owen asked why the city would close the park. Mr. Corley responded that this operation is inconsistent with the downtown revitalization program.

Mayor Ewers asked how the City would deal with evacuation and relocation of tenants who are on fixed incomes. Mr. Pritchard replied that it could be accomplished within six months based on the State statutes. However, he would prefer 18 to 24 months to assist tenants to relocate in a humane manner.

Council member Ruse suggested that a definite date be established for the trailer park closure. A work session will be needed to finalize this project and determine the disposition of the city auditorium.

Council member Kay advised that a date certain would be necessary, however 18 months would be ample time for closure of the park. There are many options for better use of this property within the downtown redevelopment plan.

President Owen agreed that 18 to 24 months would be a sufficient timeframe. A stated purpose must be established to justify the anticipated closure of the park. He asked that a work session be scheduled before October 1 to make definite plans for closure of the trailer park and disposition of the city auditorium. Mid-September was suggested for the meeting, which would allow staff time to prepare information for council.

Council member Ruse suggested that higher rental rates could be initiated at the trailer park, which would help with the costs of moving and relocation of the tenants. Statistical information is needed relative to the auditorium, such as scheduled events, expenses, and revenue generated.

Mr. Pritchard advised that last year the auditorium was rented 94 days, of which 43 were for commercial uses, and two days for an election site. Revenues were \$22,500 but expenses were

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\$83,500 for a twelve-month period. The quality of the building and availability of many other rental facilities has reduced the rental time for the auditorium to one third of previous year rentals.

Council member Guinn asked how much has been spent to improve the auditorium. Mr. Pritchard advised that approximately \$100,000 was spent over a five-year period.

Council member Kay asked if the revenue stream from the trailer park was negative or positive. Mr. Pritchard responded positive and that the park generates about \$2,000 per year in revenue.

President Owen requested a work session during the second or third week of September.

Mr. Nugent advised he would schedule a work session as requested. He also reminded council that funding would not be available for new construction of an auditorium this year if the current one is demolished. The cost to renovate the auditorium would be \$2.7 million. Mr. Corley advised that cost to construct a new multi-purpose facility would be very near the cost of renovation for the auditorium.

Public Works: Director John Zobler

Mr. Zobler reported the department is actively moving towards automation of garbage services. President Owen asked for a color-coded map showing the present and future distribution of garbage collection carts. Mayor Ewers asked for a progress report relative to automation of garbage collection.

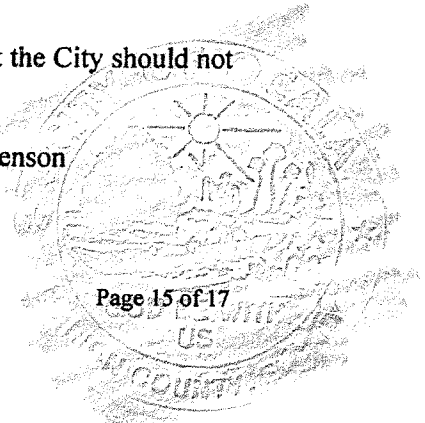
Mr. Zobler advised that \$35,000 was budgeted to hire a consultant to assist with the automation program development. The program addresses several components, and will be presented in about eighteen months. The ultimate goal is a program of recycling that would allow once a week garbage collection service.

Mr. Zobler explained that cities providing cart containers large enough to store garbage for week have reduced pick-up service to once a week. Those on recycling programs also have once a week service.

Council member Kay asked about the executive life insurance benefit. He proposed that since the city pays the premiums it should be designated as a beneficiary to receive one-half of the death benefit. Mr. Corley explained the city provides a policy for department heads and they have a choice of beneficiary. He advised that this benefit is a recruiting tool.

Council members discussed current life insurance policies and concurred that the City should not be a beneficiary of an individual employee policy.

Fleet Department: Director Glenn Stephens and Deputy Director Bill Stephenson



**OCALA CITY COUNCIL
WORK SESSION MINUTES
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President Owen inquired about the need for a fuel tanker truck. Mr. Corley advised that FEMA would buy a truck for emergency purposes during a hurricane. A leased truck could possibly be replaced by one purchased by FEMA.

Mr. Stephens advised that one 250-gallon tank truck is available, as well as 57 generators to keep the lift stations operational during emergencies.

Council member Ruse asked for a report on the police vehicle take-home program. He expressed concern that many of these vehicles are not providing an illusion of protection for city residents, but rather those in Marion County.

Mr. Stephens advised that the greatest percentage of take-home police vehicles is outside the city.

Council members Ruse, Guinn and Owen expressed concern regarding city costs to provide transportation for police officers who live in Marion County and use take-home vehicles.

Water and Sewer: Director Henry Hicks, Deputy Director Bill Hall, Deputy Director Jeff Halcomb.

Mr. Hicks discussed the provision of service outside the city limits, including the purchase of private water supply companies. He also assured council that equipment and staff is in place and prepared to provide emergency service during the hurricane season.

Mr. Nugent spoke regarding the proposed purchase of three water supply systems by the city. The purchase costs will be discussed in more detail, and a contract for \$1.28 million will be presented to council for review

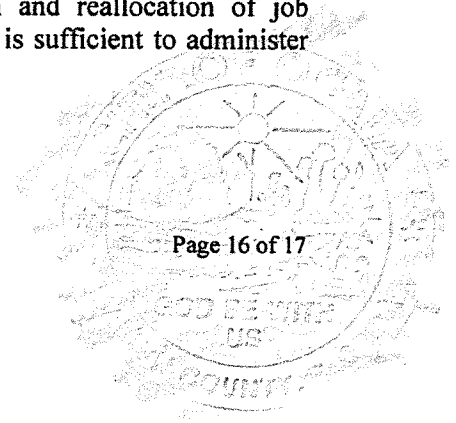
Mr. Corley added the capital improvement program and service rates are still being evaluated for a work session in October.

Information Technology: Director John Driscoll

Mr. Corley advised that additional funding might be necessary to provide server equipment later in the year. This budget is recommended as presented.

Community Programs: Director Jim Simon

Mr. Corley introduced Director Jim Simon who was appointed following the retirement of Bill Patten. This budget has one less position due to reorganization and reallocation of job assignments. Due to the reduction in grant funding the current staff is sufficient to administer the CDBG programs.



**OCALA CITY COUNCIL
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Council member Guinn asked for a progress report on the train station. Mr. Simon advised it is doing well. Two possible lessees wish to occupy the vacant space in the baggage room. Revenue from this lease would be about \$71,500, with expenses of \$69,500.

Mr. Corley announced that the budget work session would resume at 8:30 a.m. in the morning.

Meeting adjourned. There being no further discussion, the meeting adjourned at 4:10 p.m.

Valerie J. Forster
City Clerk

Paul Corley
Council President

THIS IS TO CERTIFY THE FOREGOING TO
BE A TRUE AND ACCURATE COPY
Paul Corley
CITY CLERK

Ordinance

No. 5677

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, RENAMING ARTICLE III, "EMERGENCY FIRE SERVICE USER FEE"; AMENDING SECTION 30-50, DEFINITIONS; CLARIFYING THE DEFINITION OF PREMISES; AMENDING SECTION 30-51, FINDINGS AND BACKGROUND; PROVIDING FOR STATUTORY AUTHORITY TO IMPOSE AN EMERGENCY FIRE SERVICE USER FEE AND TO CLARIFY THAT FEE BEING IMPOSED IS A USER FEE; AMENDING SECTION 30-52, BY AMENDING THE TITLE TO READ "EMERGENCY FIRE SERVICE USER FEE IMPOSED"; AMENDING SECTION 30-53 BY DELETING REFERENCE TO CITY'S UTILITY BILLING SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That the Code of Ordinances, City of Ocala, Florida, is hereby amended by amending Article III, title, which title reads as follows:

ARTICLE III. EMERGENCY FIRE SERVICE USER FEE

Section 2. That Section 30-50 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services for which a customer is billed in accordance with the city's utility billing system.

Section 3. That Section 30-51 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

Sec. 30-51. Findings and background.

The city council finds and declares as follows:

EXHIBIT
E

- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) Florida Statute, §166.201 authorizes a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.
- (d) The benefits of emergency fire service received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.
- (e) Insufficient funding is available from other general fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (f) Imposing an emergency fire service user fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (g) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (h) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

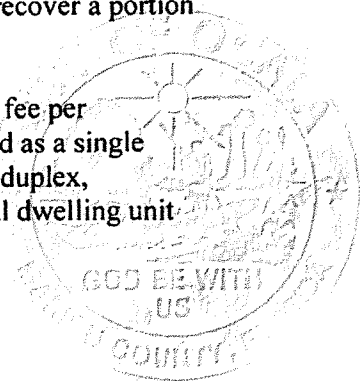
Section 4. That Section 30-52 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

Sec. 30-52. Emergency fire service user fee imposed.

To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five-year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) Residential fee. All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit for the residential class is as follows:

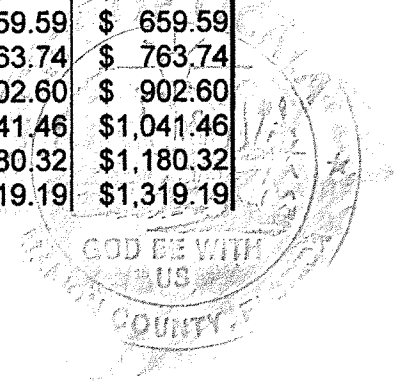


<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>	<u>FY2011</u>
\$12.00	\$14.30	\$14.30	\$15.20	\$15.20

- (b) Non-residential. Non-residential properties are classified as either Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

**Fire Services Fee Schedule for Institutional, Governmental and
Commercial/Industrial (C/I) Property**

<u>Sq. Ft. Range</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80
50,001 - 60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001 - 70,000	\$ 356.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001 - 80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001 - 90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001 - 100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001 - 120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001 - 140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001 - 160,000	\$ 821.86	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001 - 180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001 - 200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19



200,001 - 250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001 - 300,000	\$1,506.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001 <	\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

Section 5. That Section 30-53 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

Sec. 30-53. Applicability; collection; review.

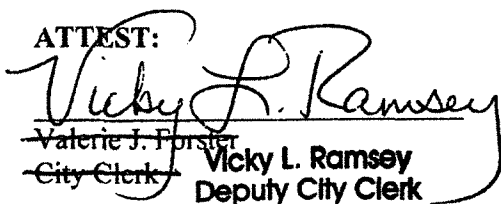
- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.
- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manor as that used with all other portions of the bill for utility services.
- (c) The emergency fire service fee shall be reviewed by the city council in July of 2011 and, thereafter, at five year intervals, for the purpose of determining the appropriate fee for the following five fiscal years required to recover a portion of the projected cost of providing emergency fire services as determined by the city council. This review will be based on the most current data available.

Section 6. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

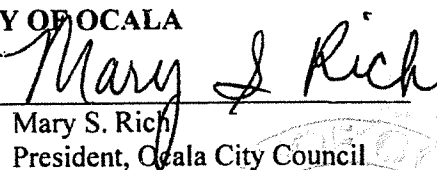
Section 8. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.

ATTEST:


~~Valerie J. Forster~~
~~City Clerk~~ **Vicky L. Ramsey**
Deputy City Clerk

CITY OF OCALA

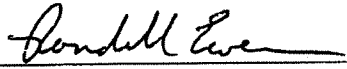
By:


Mary S. Rich
President, Ocala City Council

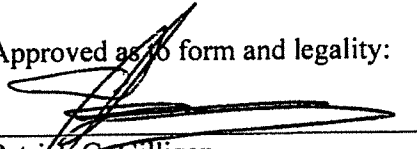
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BE A TRUE AND ACCURATE COPY


CITY CLERK

Approved Denied by me as Mayor of the City of Ocala, Florida, on June 12th, 2007.

By: 
Randall Ewers
Mayor

Approved as to form and legality:


Patrick G. Gilligan
City Attorney

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Ordinance No. 5677
Introduced: May 15, 2007
Adopted: June 5, 2007
Legal Ad No.: A000323380



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MEMORANDUM

TO: City Council
Matt Brower, City Manager

FROM: Patrick G. Gilligan, City Attorney

RE: Fire Service User Fee

DATE: March 3, 2011

I was tasked with updating Council on the legal issue between the City of Ocala and the Marion County School Board concerning the payment of the Fire Service User Fee. Below is a brief history of the issue.

In 2006 the City of Ocala implemented a "fire service impact fee" and a "fire service user fee". The impact fee was imposed pursuant to City of Ocala's Home Rule authority and Florida Statute, §163.31801 (the Florida Impact Fee Act), for the equitable portion of the cost of financing the extension or expansion of the emergency fire services on all new construction and renovations within the city limits. The user fee was imposed pursuant to Florida Statute, §166.201, authorizing a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government.

Shortly thereafter, the Marion County School Board asserted that it was not obligated to pay either of these fees pursuant to Florida Statute, §1013.371(1)(a). That statute reads, in pertinent part:

- (a) Except as otherwise provided in paragraph (b), *all public educational and ancillary plants* constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants *are exempt from* all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and *impact fees or service availability fees*. (emphasis added).

I researched these legal positions and concluded that the School Board was not obligated to pay the impact fee under the clear language of the statute. I also opined, however, that the School Board was obligated to pay the user fee codified in Chapter 30,

EXHIBIT
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Article III of the City of Ocala Code of Ordinances. Council ultimately chose not to pursue the School Board for the user fees at that time.

My legal conclusions back in 2006 were that Florida Statute, §166.201 authorized a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law. As discussed below, I believe the “Emergency Fire Service User Fee” is a proper user fee.

Although the statute explicitly exempts the School Board from paying “service availability fees,” I do not believe this is an availability fee. Rather, I believe it to be a “user” fee authorized by Florida Statute, §166.201.

The Florida Statutes do not define a “service availability fee.” Case law, however, is helpful in defining what an “availability fee” is. In Florida Public Service Commission v. Florida Waterworks Association, 731 So.2d 836, 839 (Fla. 1st DCA 1999), *quoting* Rolling Oaks Utilities v. Florida Public Service Commission, 533 So.2d 770, 773 (Fla. 1st DCA 1988), the Court explained the nature and purpose of “service availability fees”:

Although the Commission does not have a formal rule or policy requiring a utility to maintain a reserve capacity, in given cases it makes an adjustment to a utility's rate base which, in a sense, rewards the utility for its investment in plant capacity which the utility has readily available, but not currently in use. By allowing a margin reserve increment to the rate base, the Commission permits the utility to charge its existing customers a portion of the cost necessary to have service available for future customers.

As future customers requiring new connections come on line, they are required to pay service availability fees which may be capitalized, in whole or in part, as contributions-in-aid-of-construction.

“Contribution-in-aid-of-construction” means any amount or item of money, services, or property received by a utility, from any person or governmental authority, any portion of which is provided at no cost to the utility, which represents a donation or contribution to the capital of the utility, and which is used to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services.

In other words, “service availability fees” are used to develop excess capacity to insure that the service will be available *for future users of the utility*. Conversely, funds generated from the fire user fee are used as a portion of the revenues budgeted by the city for providing fire services.

Thus, the fees are used to supplement the budget for the existing cost of running this service for the current users. Accordingly, the “Emergency Fire Service User Fee” is more properly characterized as a true user fee. In fact, a review of the legal opinions submitted to council both by the legal consultant hired in 2006 on this issue and my office have opined that the subject charge is a user fee.

This is an important distinction, because the School Board is not exempt from paying user fees on traditional utilities. See, City of Clearwater v. School Board of Pinellas County, 905 So.2d 1051 (Fla. 2nd DCA 2005). When discussing the “traditional utility” factor of the test set forth in City of Gainesville v. State, 863 So.2d 135, 145 (Fla. 2003) (which is used to determine whether a charge is a user fee or a special assessment), the legal consultant described the issue as follows:

While the term “traditional utility” is usually defined by examples such as the provision of electricity, natural gas, water, trash disposal and sewer services, an argument may be made that fire protection falls within this category of municipal services. Historically, fire departments were often private entities. To this day, volunteer fire departments still exist in smaller communities. Further, many cities and counties are served by independent fire control districts which are statutorily authorized to charge a variety of user and impact fees for the delivery of fire service. See Section 191.009, Florida Statutes. And, Fire service is distinguishable from police protection which is more properly categorized as a sovereign power for the administration of laws. Nevertheless, this factor is a closer call.

My research of the statutes and case law makes me believe that the fee is a valid user fee on what is arguably a traditional utility, and that the Marion County School Board would not be exempted from paying the fee.

On the other hand, as no appellate or attorney general opinions exist regarding fire services fees like the one proposed here, I want to make clear that any challenge to the fee would present a case of first impression in Florida.

Another area of concern is the fee’s original title as an “Emergency Fire Service Availability Fee.” This is because the first factor listed in the City of Gainesville test is “the name given to the charge,” although admittedly the test is utilized to determine

whether a charge is a fee or a special assessment. By amendment this Council changed the name of the ordinance from "Emergency Fire Service Availability Fee" to "Emergency Fire Service User Fee" because the fee was never conceived as anything but a user fee and the original name was clearly a scriveners' error.

I have updated my research and my opinions on both the impact fee and the user fee are still the same. I still do not believe the School Board is exempt from having to pay the Fire Service User Fee.

City Council directed that I attempt to obtain an Attorney General's Opinion about the applicability of the user fee and the responsibility for payment of same by the Marion County School Board under Florida Statute, §166.201 and Florida Statute, §1013.371(1)(a).

I began drafting the request for an Attorney General's Opinion and reviewed at that time the Attorney General's requirements for issuance of same. The Attorney General requires that if it is a dispute between governmental entities, that both of those entities consent and request the Attorney General's Opinion. In short, the Attorney General does not want to act as an arbiter between competing governmental factions in legal disputes between them without the express direction and acquiescence by both entities.

Given that hurdle, I contacted shortly before Christmas attorney Beverly Lambert who is the current School Board attorney. Ms. Lambert, at that time, told me it would probably be after the New Year before she could address the issue with School Board administration and that she also was aware of a case involving the City of Gainesville which may impact the result.

In the meantime, I obtained copies of the respective motions in a lawsuit between the City of Gainesville and the Alachua County School Board concerning payment of storm water fees by the School Board to the City of Gainesville. The issue there is not the applicability of the user fee as in our case, but, rather, whether or not the School Board can be forced to pay governmental fees to another governmental entity without an express contract to do so. I did not believe that case is applicable to the legal issue of whether the fire user fee is valid and owed by the School Board, although that issue also may be raised as a defense to the School Board's obligation to pay the fire user fee.

On February 7, 2011, I was able to contact Ms. Lambert to inquire as to the status of the School Board's position. She told me during that discussion that she was told that the Gainesville case was going to have motion hearings on the matter of February 23, 2011, and she wanted to postpone going to the School Board management and/or the

School Board until after that time. I explained to her that I had been directed to take action and I would need to report this back to City Council for direction.

At this time, it appears that Council has two possible options. First, we can begin the process leading up to filing suit against the School Board for the user fee for the unpaid fees. Before the City can do that, it needs to comply with Florida Statute, 164.101 et. seq. the "Florida Governmental Conflict Resolution Act." which requires pre-suit requirements before one governmental entity sues another.

Specifically, the City is required to initiate and notice certain pre-suit conflict resolution procedures set forth in Florida Statute, §164.1052 which states:

**164.1052. Initiation of conflict resolution procedure;
duty to give notice.**

(1) The governing body of a governmental entity shall initiate the conflict resolution procedures provided by this act through passage of a resolution by its members. The resolution shall state that it is the intention of the governing body to initiate the conflict resolution procedures provided by this act prior to initiating court proceedings or prosecuting action on a previously filed court proceeding to resolve the conflict and shall specify the issues of conflict and the governmental entity or entities with which the governing body has a conflict. Within 5 days after the passage of the resolution, a letter and a certified copy of the resolution shall be provided to the chief administrator of the governmental entity or entities with which the governing body has a conflict by certified mail, return receipt requested. The letter shall state, at a minimum, the conflict, other governmental entities in conflict with the initiating governmental entity, the justification for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting to be held pursuant to s. 164.1053, and suggestions regarding the officials who should be present at the conflict assessment meeting. The initiating governmental entity also shall mail a copy of the letter and resolution to any state, regional, or local governmental entities which, in the determination of the initiating governmental entity, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict,

and any other governmental entity deemed appropriate by the initiating governmental entity.

(2) Within 10 days after receiving a copy of a certified letter noticing the initiation of the conflict resolution procedure, other governmental entities receiving the notice may elect to participate in the conflict resolution process, but are not entitled by virtue of that participation to control the timing or progress of the conflict resolution process, which at all times shall remain in the discretion of the primary conflicting governmental entities. However, a governmental entity which receives notice of a conflict may, by passage of its own resolution and by otherwise following the procedures set forth in subsection (1), join the conflict resolution process as a primary conflicting governmental entity. The intent of a governmental entity to join in the conflict resolution process shall be communicated to the initiating governmental entity by certified mail. The joining governmental entity also shall mail a copy of the letter to any state, regional, or local governmental entities which, in the determination of the joining governmental entity, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict, and any other governmental entity deemed appropriate by the joining governmental entity.

(3) For purposes of this act, the date of initiation of the conflict resolution procedure shall be the date of the passage of a resolution by a governmental entity.

The City can simply wait until the School Board decides what it wants to do. Quite frankly, I think that the City should not wait. I have always advised that I believe that the School Board was obligated to pay the user fee under Florida Statute, §166.201 and my opinion has not changed. The issue as to whether or not the City can make them pay because of the "contract" issue currently pending between the City of Gainesville, FL and the Alachua County School Board is another legal issue in its entirety. I have analyzed that issue and I do not believe that a resolution of that issue one way or the other would affect the City's claim here, but I certainly would expect the School Board to raise it as a defense in any claim to impose the fire user fee against them.

As to an Attorney General's Opinion, I simply cannot obtain one from the Attorney General without the School Board joining in with that request. They have to

Memo/ City Council and M. Brower

March 3, 2011

page 7

date not agreed to do that, citing as its reasons for forbearance resolution of the case in Alachua County. I do not believe that is a valid reason to put off asking for an Attorney General's Opinion, and I would counsel City Council at this time to simply proceed forward with the pre-suit requirements of Florida Statute, §164.1052.

In any event, I need to obtain some direction from City Council as to how to proceed at this stage.

PGG:ll

Ordinance

No. 6015

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, REPEALING CHAPTER 30, EMERGENCY SERVICES, ARTICLE III, EMERGENCY FIRE SERVICE USER FEE, SECTIONS 30-50 THROUGH 30-54 AND RESERVING SAID SECTIONS FOR FUTURE USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

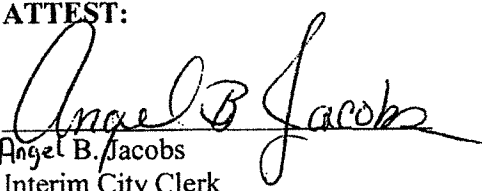
Section 1. That the Code of Ordinances, City of Ocala, Florida, is hereby amended by repealing Chapter 30, Article III, Sections 30-50 through 30-54 and reserving same for future use.

Section 2. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be held unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

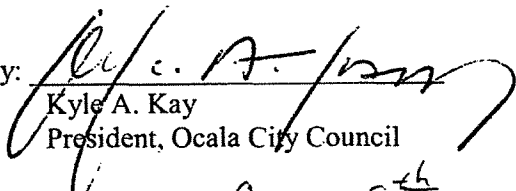
Section 3. All ordinances or parts or ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval on October 1, 2010.

ATTEST:

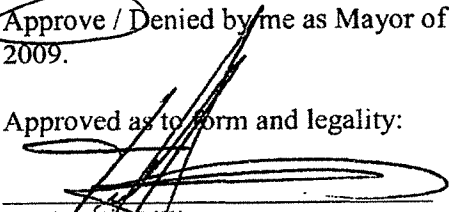

Angel B. Jacobs
Interim City Clerk

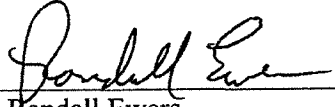
CITY OF OCALA

By: 
Kyle A. Kay
President, Ocala City Council

Approve / Denied by me as Mayor of the City of Ocala, Florida, on October 8th, 2009.

Approved as to form and legality:


Patrick G. Gilligan
City Attorney

By: 
Randall Ewers
Mayor

Ordinance No: 6015
Introduced: September 15, 2009
Adopted: October 6, 2009
Legal Ad No: #A000582235

EXHIBIT

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THIS IS TO CERTIFY THE FOREGOING TO
BE A TRUE AND ACCURATE COPY


CITY CLERK

OCALA CITY COUNCIL MINUTES

October 6, 2009

Meeting Statistics

The Ocala City Council held a meeting in the Ocala Police Department Community Room at 402 South Pine Avenue on October 6, 2009 beginning at 4:04 p.m.

Invocation

Reverend Green delivered the invocation and led the Pledge of Allegiance.

Elected Officials

Kyle A. Kay, President	Present
Reuben K. Guinn, Council Member	Present
Daniel Owen, Council member	Present
Mary S. Rich, Council member	Present
Charles Ruse, Jr., Council member	Present
Randall Ewers, Mayor	Present

Municipal Officers/Others Present

The meeting was also attended by City Manager Ricky Horst, City Attorney Patrick Gilligan, Interim City Clerk Angel Jacobs, Deputy City Clerk Roseann Fusco, Communications Coordinator Sonny Allen, Assistant City Manager/Utility Services Matthew J. Brower, Assistant City Manager/City Engineer Bruce Phillips, Assistant City Manager/Community Services John Zobler, Chief of Staff/Support Services Catherine Cameron, LTP&S Director Marc Mondell, LTP&S Development Manager Astrida Troupovnieks, Recreation & Parks Director Kathy Crile, IT Director Jeanette Benson, Internal Auditor Oscar Claudio, Police Chief Samuel Williams, LTP&S Development Analyst Melanie Gabraldi, Park Operations Division Head Julie Johnson, the news media and other interested parties.

Public Comments

Dr. Bill Coan of 1037 SE 9th Avenue expressed his concern about the Florida Municipal Power Agency and the high utility rates. In May 2009 he visited with Mr. Horst and Mr. Brower and requested assistance for information and commented they were both very forthcoming. If the FMPA were to go out, since the City owns a percentage of FMPA, the city also owns FMPA's debt.

Council member Ruse thanked Mr. Coan for his statements and asked Mr. Coan to call him regarding the issues.

Presentations

Mr. Marc Mondell gave a presentation concerning the Office of Long Term Planning and Sustainability. September 1st marked the one year anniversary of this office. Some of the projects highlighted were transformation of the former EIF process into the Economic Investment Program, intended for economic growth for the benefit of Ocala and its residents, attract new business and encouragement of business expansion. One recent example was the Intellon Project downtown that retained 60 jobs, created 10 new jobs that paid an average of \$100,000 and investing approximately \$900,000 of capital improvement. At any given time, his office is in discussion with several companies and at this time, staff is working on the retainage

EXHIBIT

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OCALA CITY COUNCIL MINUTES

October 6, 2009

of 400 jobs in the community, the creation of up to 300 jobs and investments of over \$14 million in capital improvements. He remains optimistic in bringing some of these projects forward in the near future. The City's first Economic Development Plan has been created that reviews short term, mid-term and long term projects that identify strategic locations and targeted industries. Some projects identified in this plan are the NW 44th Avenue Project, a \$4 million road project, \$3 million of that came from the federal government through the stimulus dollars from the Economic Development Administration. The City's matching funds was \$1 million. This will enable several companies to build facilities; the primary company is Cone Distributing and will assist in becoming a beltway through and around Ocala. This will open up additional transportation capacity and additional construction jobs. The newly created group Ocala Enterprise Zone will bring Council the proposed strategy and map in November 2009 and anticipate forwarding it to the state the same month to establish the zone. The primary benefit of that zone will offer special state incentives to companies that locate or expand in this zone and also for companies that hire within the established zone. The Magna Project's purpose is to attempt to create additional industrial park space within the City limits that will lead to long term job creation and provide shovel ready sites since potential businesses look at the inventory of existing sites that are available. Some look only for raw land that they can purchase or lease to build a custom facility on and staff needs to be ready to accommodate this. His office is also tasked with handling the airport real estate development and works closely with Marion County's Office of Sustainable Growth, the Economic Development Administration, the Office of Tourism and at state and federal levels. City relies on staff and other departments to assist them and remarked they have been excellent with their quick responses and appreciates their help. On May 1, 2009, the City announced the creation of the Ocala Business Park at Ocala International Airport. There will be shovel ready sites for large distribution centers and a construction schedule for installation of infrastructure that will begin February 2010. The primary goal is to make the developers inside and outside of the community aware of the City's plans to move forward with the business park and that we are interested in receiving proposals for development. The City has received a few proposals and anticipates bringing them forward to Council in the near future. The office is also tasked with moving downtown redevelopment. Mr. Horst has been able to negotiate a deal with the Chamber of Commerce for a property exchange. They are scheduled to vacate their existing premises today and will relocate to our former Building Department. Staff is in the process of developing a document to solicit developer proposals for the former Chamber of Commerce site as well as the Sprint site and other downtown properties in the near future. Mr. Mondell introduced some of his staff to Council and the audience. He mentioned the various tasks they perform and expressed his gratitude for the opportunity to work for Economic Development as he is aware of how important it is to create jobs in the community.

President Kay inquired what the timeline of the next scheduled event on the old Chamber of Commerce site.

Mr. Mondell responded that Mr. Phillips is handling it and asked him to address the question.

Mr. Phillips replied that they met on site yesterday with a contractor that will demo the building. A consultant is scheduled to come in this afternoon to ensure there is no asbestos and if there is,

OCALA CITY COUNCIL MINUTES

October 6, 2009

it will be removed before the demo is done. The building should be demolished in about 2-4 weeks.

Mr. Guinn asked Mr. Mondell about the status of the discussions regarding the Marion Theatre.

Mr. Mondell responded that the City must first regain control of the property. Mr. Zobler has been working with the City attorney's office to provide the proper notice to the tenant that the lease is being terminated and regaining control of the property. There are discussions going on with potential end users that have great knowledge and experience in dealing with theatres including small historic ones like the City's. Staff will meet with them next week or the following week.

Mayor Ewers expressed his appreciation for Mr. Mondell's hard work and Mr. Horst as well.

Public Hearings

President Kay opened the public hearings at 4:11 p.m.

Approved/Council member Rich moved and Council member Guinn seconded to approve the Alcoholic Beverage Location Permit for On-Premise Consumption for Cabana's Catering, LLC doing business as the Mojo Grill Located at 103 SE 1st Avenue (Case No. 43271) (Staff Presentation By John Zobler).

The owner, Ms. Toby Thompson owner of Cabana's Catering, introduced herself to Council and the audience.

There being no discussion, the motion carried by unanimous roll call vote.

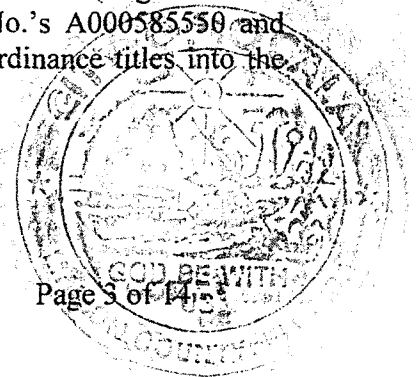
Approved/Council member Ruse moved and Council member Guinn seconded to approve the Alcoholic Beverage Location Permit for On-Premise consumption at Booze, Food & Entertainment Restaurant Located at 18 SW Broadway Street (Case No. 43199) (Staff presentation by John Zobler).

The applicant, Mr. Rob Batsel of 1707 SE 11th Street and Mr. Hugh Price the owner were present to answer any questions.

There being no discussion, the motion carried by unanimous roll call vote.

Second and Final Reading of Ordinances (All are public hearings)

The Interim City Clerk filed proof of publication for Ordinance No.'s 6015 (Legal Ad No. A000582235, September 4, 2009), 6016, 6017 and 6018 (Legal Ad No.'s A000585550 and A000585551, September 18, 2009). The Interim City Clerk read the ordinance titles into the record.



OCALA CITY COUNCIL MINUTES

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Approved/Council member Ruse moved and Council member Rich seconded to approve Ordinance 6015 repealing Sections 30-50 through 30-54 of Chapter 30, Article III (Staff Presentation by Patrick G. Gilligan).

Council member Ruse commented that this was adopted a few years ago and designed as a temporary measure to enhance and improve service and contains a provision that at the end of four years, the City will be required to reset the fee in about one and a half years. There are several reasons for this. First, the City built some buildings and anticipated a \$3 million return and is receiving approximately \$7 million per year. One of the selling points was taxing the schools that use the fire services but they no longer pay this. In addition, this has unintended consequences. If one leaves the electricity on in the warehouse, one pays the fire fee. If you turn the electricity off, you don't pay the fire fee. However, this also turns off the sprinkler and alarm system and anything else that uses electricity creating a dangerous situation. Mr. Ruse remarked it should be in the ad velorum department. The fire department will have a year to adjust its budget and find out how to replace the money. On selected cities in Florida, Ocala pays \$264.15 the third highest for fire services. He believes the City is paying too much for the services and the efficiency study will assist in figuring this out. The purpose is to set pressure on the Budget and Fire Department to come up with some savings.

Council member Rich remarked although she seconded the motion, she will not support this because she wants to see this run its course. She would like to wait until the suggestions and ideas the departments have prior to making any changes.

Council member Guinn does not support this either and does not understand the County's concern. There are 464 homes in the City that does not pay ad velorum taxes but it doesn't cost the City anymore to provide power service to a home that is worth \$200,000, \$600,000 or \$1 million. Although the higher priced home will pay more taxes, it does not cost the Fire Department more to be prepared to fight the fire if they have to go to this home.

Council member Owen remarked that it is a good time to repeal this and the whole study will take on a new scope. Although he's heard that fire stations may close, he does not believe this to be true and does not appreciate the scare tactic. He will support this motion.

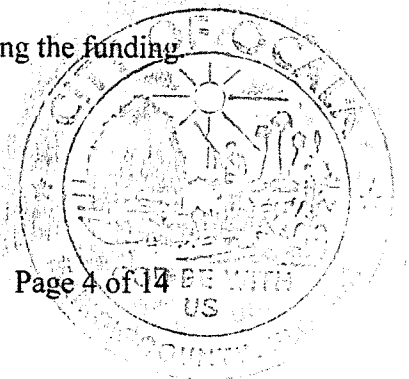
President Kay commented he will vote in favor of this motion. When this was introduced a few years ago, he made the same arguments as Council member Ruse. It will put additional pressure on the budgetary process without the fee, but in a future Council meeting he won't be part of, the decision can then be made as to whether or not ad velorum tax needs to be adjusted or that the budget needs to be decreased to accommodate the lack of revenue.

Council member Guinn remarked that the fire budget will be cut about 50%.

Council member Ruse responded, that this is not so, it's really just rearranging the funding.

Council member Guinn inquired what the current fire budget was.

An unknown person responded \$12,287,000.



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President Kay remarked that the Fire Department budget has hovered around \$11-12-13 million for a number of years prior to the fire fee. The additional revenue freed up other revenues to bolster other parts of the budget and will have the reverse effect.

Council member Guinn's replied that his point on the ad velorum tax is that is unfair for someone that owns a home that's worth \$800,000 to pay the taxes of one that costs \$200,000 when it does not cost the Fire Department anymore to provide fire services to both homes.

Mayor Ewers remarked that Council will set the level of service and the efficiency study will speak to that. The funding mechanism will be either ad velorum or a fee attached to individuals. He anticipates it would require more equipment to fight a larger home or a building since the equipment is specialized. He feels we have a great fire department and need to figure out how what mechanism to fund it with.

Council member Guinn asked Council member Ruse why the County is upset with this and if they are paying it.

Council member Ruse responded it is because they view it as a tax and not a fee and they are paying it.

Council member Rich commented that the County does not change rules if it doesn't benefit the City and it is statutory law that schools do not pay this tax. To repeal this just because the County is upset does not make sense to her.

Mr. Bill Coan looked up the old agenda when this was ordinance was first passed and the fire fee goes by the number of square footage and when looking at the scale, there are many people paying a tremendous amount of money. If the City wants to add fees, he would like it to be made a tax so it can be deducted and to reduce the fee.

Council member Owen responded that he does not want to see anyone's home burned down and it is a matter of funding.

There being no further discussion, the motion carried with Council members Owen, Ruse and Kay voting aye and Council members Guinn and Rich voting nay.

Denied/Council member Rich moved and Council member Guinn seconded to approve Ordinance 6016 amending Section 42-9, Public Indecency (Staff Presentation by Patrick G. Gilligan)

Mr. Gilligan remarked there are approximately 4-5 communities around the country that have adopted or are looking into adopting such an ordinance, one being in Riviera Beach that the Circuit Court invalidated. A community in Louisiana passed one that has not been challenged. The City of Atlanta looked into enacting it but it did not pass and a law review article was written regarding appropriateness. Mr. Gilligan's legal opinion is that the ordinance Council member Rich proposes is clear and definite enough to be enforced by the police department and would pass the constitution.

OCALA CITY COUNCIL MINUTES
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Council member Rich remarked that if one is going to be in public, pants should be worn around the waist. She finds it disrespectful to herself and others who do not wish to see pants worn so low.

Council member Guinn does not want people to be judged by the clothing they wear and asked what the remedy, penalty would be for not complying with this ordinance. He asked Chief Williams how would be enforced.

Chief Williams responded he had not read the ordinance yet.

Mr. Gilligan responded it would be \$500 or imprisonment for a term not to exceed 60 days, the standard general penalty under the code of ordinances. It is a misdemeanor and the person would probably receive a warning to pull their pants up. If they did not comply, a citation would be issued to appear in court.

Council member Guinn commented that although he agrees it does not look good, there are more pressing issues the police have to deal with, that this would be hard to enforce and will not support it.

Council member Ruse remarked that he wholeheartedly supports and respects Council member Rich's intent, he is of the professional opinion that it would not pass constitutionality and does not support this.

President Kay agrees with Council member Rich's intentions but feels the ordinance infringes on the liberty to be foolish and poor judgment. He prefers to retain that liberty rather than have it imposed.

Council member Ruse remarked that to be issued a citation or thrown in jail for this type of infraction is too draconian.

There being no further discussion, the motion to approve was denied with Council member Rich voting aye and Council members Guinn, Owen, Ruse and Kay voting nay.

Adopted/Council member Guinn moved and Council member Ruse seconded to adopt Ordinance 6017 to rezone approximately 1.23 acres from B-4, General Business to B-5 whole sale business (Case No. ZON09-0011) (Staff presentation by John Zobler).

The applicant, Jim Bailey of 1720 SE 16th Avenue explained the intent of the rezoning request is for the relocation of Grandview Rental & Equipment, currently located where the new improvements are being made and they are moving into the vacant building.

There being no further discussion, the motion carried by unanimous roll call vote.

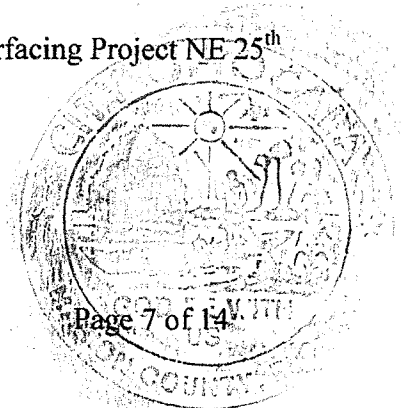
OCALA CITY COUNCIL MINUTES

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Tabled/Council member Ruse moved and Council member Owen seconded to table Ordinance 6018 to October 20, 2009 to amend Section 70-683 Utility Security Deposits (Staff Presentation by Matt Brower. There being no discussion, the motion carried by unanimous roll call vote.

Approved/Council member Rich moved and Council member Guinn seconded to approve all items on the consent agenda except items 6k, 6p and 6q which will be held for discussion later in the meeting.

- a. **Approved** Work Order No. 04 to Reynolds, Smith and Hills, Inc. (RS&H) for the Development of a Wildlife Hazard Management Plan for the Ocala International Airport for \$63,700.00
(Staff Presentation by Bruce Phillips)
- b. **Approved** the final release of retainage and final payment for the Lake Weir Avenue Reconstruction – Phase I Project Bid No. B-3099 to Counts Construction, Inc. for \$210,390.96 and **accepted** the one (1) year maintenance bond
(Staff Presentation by Bruce Phillips)
- c. **Approved** Change Order No. 13 deducting \$627.10 from the contract with GWP Construction for the Water Main Replacement Phase II Project Bid No. ITB-08016
(Staff Presentation by Bruce Phillips)
- d. **Approved** release of retainage for \$54,105.95 for final payment to Steven Counts, Inc. (SCI) Bid No. ITB-08037 and **accepted** the one (1) year maintenance bond for the Airport Apron Expansion
(Staff Presentation by Bruce Phillips)
- e. **Approved** Change Orders No. 3, 4, 5, 6 to G.M. Building Services, Inc. for \$19,348.81 for Renovations to the Municipal Golf Course Clubhouse Bid No. ITB-09075
(Staff Presentation by Bruce Phillips)
- f. **Awarded** contract for Bid No. ITB-09079 – 2009 Special Resurfacing Project NW Martin Luther King Jr. Avenue to Counts Construction, Inc. for \$139,255.50
(Staff Presentation by Bruce Phillips)
- g. **Awarded** contract for Bid No. ITB-09081 – 2009 Special Resurfacing Project SE 18th Avenue to Counts Construction, Inc. for \$97,671.75
(Staff Presentation by Bruce Phillips)
- h. **Awarded** contract for Bid No. ITB-09082 – 2009 Special Resurfacing Project NE 25th Avenue to Counts Construction, Inc. for \$47,970.70
(Staff Presentation by Bruce Phillips)



OCALA CITY COUNCIL MINUTES

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- i. **Awarded** contract for Bid No. ITB-09083 – 2009 Special Resurfacing Project NE 36th Avenue (North of NE 14th Street) to Counts Construction, Inc. for \$335,281.20
(Staff Presentation by Bruce Phillips)
- j. **Awarded** contract for Bid No. ITB-09085 – 2009 Special Resurfacing Project SE/NE 36th Avenue (South of NE 14th Street) to Counts Construction, Inc. for \$988,939.00
(Staff Presentation by Bruce Phillips)
- k. **See item 7/Approve Interlocal Agreement for Transfer of Animal Control Services to Marion County**
(Staff Presentation by John Zobler)
- l. **Approved** a \$500 cash sponsorship and a \$1,169.75 fee waiver sponsorship from the Community Event Fund to the Children's Home Society of Florida for Celebrate Adoption
(Staff Presentation by John Zobler)
- m. **Approved** a \$2,000 cash sponsorship from the Community Sponsorship Fund to Fine Arts of Ocala for the Ocala Arts Festival
(Staff Presentation by John Zobler)
- n. **Approved** a \$2,000 cash sponsorship and a \$392 fee waiver sponsorship from the Community Sponsorship Fund for the SportsAbility Community Event Fund held on October 2 & 3, 2009
(Staff Presentation by John Zobler)
- o. **Approved** Second Hand Dealer License #A39159 for Toy's for Tot's Thrift Store located at 1713 East Silver Springs Boulevard
(Staff Presentation by John Zobler)
- p. **See item 7/Adopt Resolution 2010-01 concerning development of former Magna Property**
(Staff Presentation by Marc Mondell)
- q. **See item 7/Accept the donation of three "48" Plasma Televisions, including installation from Robert Tillander to be used at the Ocala Golf Club Snack Bar**
(Staff Presentation by John Zobler)

Consent Agenda Items Held for Discussion

Should any items be removed from the Consent Agenda for discussion; they will be discussed at this time.

6k. Approved/Council member Ruse moved and Council member Owen seconded to approve the Inter-local Agreement for Transfer of Animal Control Services to Marion County (Staff Presentation by John Zobler)

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Council member Guinn inquired if the County will take care of wild animals and would they take the domestic animals to the Human Society, a no kill facility or the County pound where they would be put to sleep.

Mr. Zobler will provide trapping service for cats and dogs as well as wild life. The wild life would have to be aggressive, injured or sick or acting strangely. Traps can be delivered to the house or picked up at the shelter. The difference between City and County service is that typically in the City if a wild animal is a nuisance, a trap will be given for that purpose, call the City when the animal is in the trap and will not leave it in the trap over the weekend so as not to cause suffering. The county will do the same, but when it relates to wild life, they will not do it as a matter of convenience. When the City picks up stray animals, they are delivered to the Marion County Animal Shelter where they are held for about 3-5 days. If the animal is not claimed, it is put up for adoption or euthanized.

Council member Guinn asked if the two employees will be working for the County.

Mr. Horst replied the two employees will work for the City and the service will be enhanced. The citizens of Ocala are already paying the taxes to the County. Through this three year transition, the City will downsize its commitment and be out of it altogether. It is a double taxation issue.

Council member Ruse inquired if it would include dangerous dogs.

Mr. Zobler replied in the affirmative and noted the County has two certified officers for this and also certified cruelty investigators which the City does not.

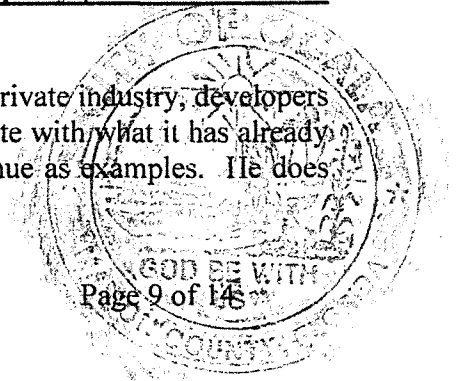
Dr. Bill Coan of 1037 SE 9th Avenue remarked that the City's service has been incredible and has trapped at least 35 raccoons with his own traps but was concerned that the County won't pick them up.

Mr. Horst replied that the County will respond to anyone that calls but through their investigation if it is determined it is not a significant issue they have a list of private trappers. All citizens of the County have the right to petition the County to change or provide a better service and suggested we do this.

There being no further discussion, the motion carried with Council members Guinn, Owen, Ruse and Kay voting aye and Council member Rich voting nay.

6p. Adopted/Council member Rich moved and Council member Guinn seconded to adopt Resolution 2010-01 concerning development of former Magna Property (Staff Presentation by Marc Mondell)

Council member Ruse remarked that this needs to be driven more by private industry, developers have not made any commitments and the City does not need to compete with what it has already done. Council member Ruse gave the airport, Muni 2 and 44th Avenue as examples. He does not support this.



OCALA CITY COUNCIL MINUTES

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Mayor Ewer inquired if there were various time frames or as it progresses, would it all come together at the same time.

Mr. Horst responded that there is no time frame since there is knowledge of who owns the land but not of what will be done with it. The intent is designed to develop in phases to meet construction. Pieces of the road would be built if there was something there to use the road and pay the taxes. Nothing will happen until there is a development agreement nor would any dollars be spent. Staff is aware of the struggle with empty buildings but those buildings would not accommodate businesses such as Sysco or a Wal-Mart distribution center.

Council member Guinn understands Council member Ruse's concerns, but he will support this resolution.

Council member Rich inquired if the site was not developed would it be in jeopardy.

Mr. Mondell responded it is a matter of being pro-active and there are things that can be done as a community and staff recognizes the opportunity presented with this property.

Mr. Owen remarked he would like the City to be primed and ready when the economy turns around and developers start coming through.

President Kay commented that this will assist when presenting something to a marketplace that may see a need in Ocala.

There being no further discussion, the motion carried with Council members Guinn, Owen, Rich and Kay voting aye and Council member Ruse voting nay.

6g. Accepted/Council member Guinn moved and Council member Owen seconded to accept the donation of three "48" Plasma Televisions, including installation from Robert Tillander to be used at the Ocala Golf Club Snack Bar (Staff Presentation by John Zobler)

There being no further discussion, the motion carried with Council members Guinn, Owen, Ruse and Kay voting aye and Council member Rich voting nay.

Introduction and First Reading of Ordinances/Introduction of Resolutions (Second and Final Reading will be October 20, 2009)

The Interim City Clerk filed proof of publication for Ordinance No.'s 2010-01 (Legal Ad No. A000590065, October 9, 2009), 2010-02, 2010-03 and 2010-04 (Legal Ad No. A00059267, October 23, 2009). The Interim City Clerk read the ordinance titles into the record.

Council member Rich Introduced Ordinance No. 2010-01 amending Section 22-2 concerning local vendor preference (Staff presentation by Patrick G. Gilligan)

OCALA CITY COUNCIL MINUTES

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Council member Ruse Introduced Resolution No. 2010-02 to Amend Budget for Monies Awarded under COPS Hiring Recovery Program (Staff presentation by Chief Samuel Williams)

Council member Rich Introduced Resolution No. 2010-03 to Accept and Appropriate a Victims of Crime Act (VOCA) Grant from the State of Florida, Office of Attorney General to Hire One Full-Time Victim Witness Advocate FY2009 (Staff presentation by Chief Samuel Williams)

Council member Ruse Introduced Resolution No. 2010-04 to Accept and Appropriate the U. S. Department of Justice Bulletproof Vest Grant FY2009 (Staff presentation by Chief Samuel Williams)

Utility Report

Mr. Matt Brower presented the utility report. He gave an update on the ARP Business Model Review. A committee of owner reps began meeting August 2009 to evaluate the efficiency of the ARP Model and continuing to deliver wholesale power to its member cities. Contracts were reviewed, another meeting was held in September 2009 and discussed the Florida Municipal Power Pool and it conducts its business in allocating energy sources. At the October 2009 meeting hedging will be discussed, new types of policies and risks. The committee anticipates making a recommendation at an EC or board meeting after the work has been completed. Three main issues from the September 2009 board meeting were 1) \$150 million credit line from the Bank of Wachovia which serves as collateral for the natural gas hedging book and collateral for the interest rate swaps. It is also used for posting collateral needs for FGU and Florida Power Light to support a letter of credit that has been issued to both organizations. In the past Wachovia issued a credit line of \$100 million for funding capital projects in member cities and used as a credit enhancement for commercial paper that was issued to purchase capital equipment and capital projects that may or may not have been of an electric nature. Wachovia will not renew this line of credit and FMPA has asked their member cities to refinance projects before the line of credit expires in the first part of December 2009. Mr. Brower felt that this is a good idea and that the FMPA should not be trying to finance commercial paper or capital project from member cities.

President Kay inquired as municipalities begin to finance those projects individually, what does this mean in terms of their obligations to the FMPA and if it changes their standings.

Mr. Brower clarified that these would be local projects interest solely to individual cities; it could be a distribution line, a sewer or water line, very specific to the member city. Having each city refinance projects allows us to take that burden off the FMPA line of credit and they would make all the P&I payments at that point.

Mr. Brower mentioned that at the last Levy County Nuclear Project meeting there was an attempt to adopt a motion to terminate all future discussions and participation in the project. The motion was brought forward by Ft. Mead but did not pass because there was discussion that decisions should be made when all the facts and information are made available. This past summer the Nuclear Regulatory Commission came forward and stated Progress Energy could not proceed

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simultaneously with gating your permit and doing the initial land prep. The permit has to be issued first and the project was backed up a year or two. Progress Energy promised to forward the City new performance so staff can consider the data in evaluating our future participation with the project. The City has not received this data and has not had any contact with Progress for several months and no work on the part of the FMPA is being done on this project.

President Kay asked what the FMPA's potential portion would be in dollars and percentage.

Mr. Brower replied approximately \$660 million or 4.4%. The project itself is \$17.2 billion project.

Mr. Horst commented that although they voted to continue the dialogue, it should not be implied that it is a decision for or against the issue. Rather it is a matter of understanding all the issues and getting the facts so appropriate due diligence can be done.

Mr. Brower remarked before the vote is made by him at the EC, he will seek Council's guidance first. He informed Council that at these meetings there is a lot of discussion and a lot of civility that he considers very healthy. Going back a year, there were no questions being asked, no debate and no vigilance for responsibility and accountability to their own cities.

Mr. Brower updated Council on the Cap and Trade Bill. The House adopted their versions of the Cap and Trade Bill by one vote this past summer. The Senate has put a bill on the table called The Pollution Reduction and Investment Act. This bill was brought forward by Senator Boxer and Senator Kerry. There are some similarities and differences. The main differences deals with offsets which are essentially a counter balance compensating for something, in this case a clean energy initiative to meet emission cuts. If a company can't meet its emission cuts, it can go out and plant a forest or invest money into green energy. The bill also creates an office of integrity within the Justice Department to ensure the validity of the offsets and puts the jurisdiction of the program in the Office of the President, not the Environmental Protection Agency nor the Department of Agriculture. The EPA has made an endangerment finding on CO² that means it can bring forward the 1972 Clean Air Act and use it to ensure compliance.

The Electric Oversight Committee will meet on November 2, 2009 at 11:30 a.m. to discuss rate making. Two rate studies are currently underway, one for electric and one for water and sewer. Staff anticipates bringing these studies forward in the latter part of October 2009 or the first part of November 2009.

Mr. Brower spoke with Max West and Dick Hancock this past week and the current focus was to garner additional grant money to change some engineering designs to the proposed bio mast plant. Once completed, the power purchase agreement and the county land acquisition for the construction of the actual site would be re-engaged.

An RFP has been issued for the Organizational Efficiency and Competitiveness Evaluation requested by Council. Staff anticipates bids by October 19, 2009 and will evaluate them, then bring them forward to Council for award.

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The St. John's River Water Management District is fully engaged to establish new regulations for water conservation. Some of the regulations are disconcerting ranging from rate making, controlling irrigation, landscaping. This will eventually come to the City to monitor, control and measure. Staff will continue to monitor this and keep Council apprised.

City Manager's Report

Mr. Horst announced the upcoming Marion County Legislative Delegation meeting scheduled for Tuesday, November 17, 2009. Staff is preparing a legislative agenda for approval at the October 20, 2009 Council meeting.

City Attorney's Report

Approved/Council member Ruse moved and Council member Guinn seconded to approve the Agreement concerning adequate assurance with Taylor, Bean & Whitaker Mortgage Corporation. There being no discussion, the motion carried by unanimous roll call vote.

Mr. Gilligan requested Council's approval of the agreement from Taylor, Bean & Whitaker regarding their adequate assurance. They have deposited \$71,000+ and this will be a declining balance as they go forward towards shutting down their operations. If they default, within four days notice, the electric power can be terminated. Their meters will be checked every two weeks instead of monthly and billed accordingly. Mr. Gilligan commented this is in the City's best interest and will protect us at this time.

Mr. Gilligan requested a scheduled Attorney/Client Session for Tuesday, October 20, 2009 at 3:00 p.m. regarding the case of Larry Harrelson vs. The City of Ocala. A demand was issued to the City exceeding the firm's settlement authority and therefore discussions are necessary with Council and the City Manager. Location of the meeting will be the Police Department's Community Room.

Mr. Gilligan requested a scheduled Attorney/Client Session for Tuesday, October 20, 2009 at 3:30 p.m. regarding the case of Roger Wheeler vs. The City of Ocala. Betty Marion, the city's Worker's Compensation attorney will be in attendance along with Council and the City Manager. Location of the meeting will be the Police Department's Community Room.

Calendaring Items

Comments by Mayor

Mayor Ewers commented on how nice the One Ocala/One America breakfast was and that he plans to attend other events during the week.

Comments by Council Members

Council member Rich reminded Council members of the many One Ocala/One America events taking place this week and hopes Council will attend.

Council member Ruse proposed that Council member Owen to be the first to play at the newly renovated Ocala Golf Course.

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Council member Owen announced that he is looking forward to the opening of the Ocala Golf Club and commented on the new memberships.

Council member Ruse requested that the RFP for the Red Light Cameras be placed on the October 20, 2009 council agenda for discussion.

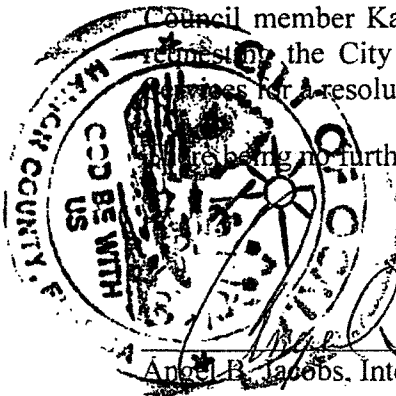
Council member Ruse requested that the City Manager investigate the \$5.00 fee being charged to city patrons by banks to cash a check.

Council member Ruse inquired about how long meetings would be held at the Ocala Police Department. Mr. Phillips advised approximately 6 weeks. Mr. Ruse requested internet access to be put on Council computers.

Council member Ruse donated two Compass membership gift certificates to City Manager Horst to give to two deserving employees for the city.

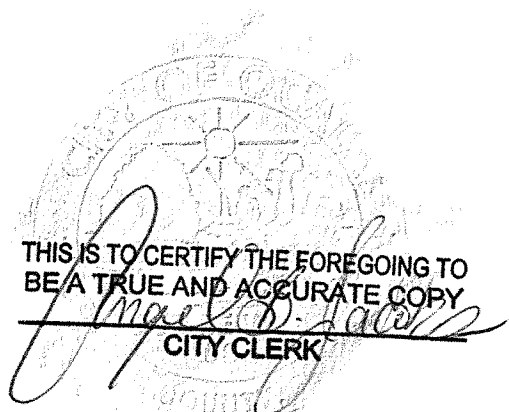
Council member Kay advised council of a request received from Congressman Stearns Office requesting the City of Ocala City Council to draft a letter of support for the National Park Service for a resolution concerning a digital cataloging grant on behalf of the Fort King site.

As there being no further business to come before Council, the meeting adjourned at 7:14 p.m.



Angel B. Jacobs, Interim City Clerk

Reuben Kent Guinn, Council President Pro-Tem



ORDINANCE 2010-43

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, REPEALING ORDINANCE NUMBER 6015, ENACTED ON OCTOBER 6, 2009, THAT INTENDED TO REPEAL CHAPTER 30, ARTICLE III, SECTIONS 30-50 THROUGH 30-54 OF THE CODE OF ORDINANCES, ON THE EFFECTIVE DATE OF OCTOBER 1, 2010; THEN AMENDING SECTION 30-50, "DEFINITIONS" BY ADDING A DEFINITION OF FISCAL YEAR; AMENDING SECTION 30-52, "EMERGENCY FIRE SERVICE USER FEE IMPOSED" PROVIDING FOR ANNUAL REVIEW, DETERMINATION AND IMPOSITION BY CITY COUNCIL OF THE UPCOMING FISCAL YEAR RESIDENTIAL FIRE USER FEE RATE AND NON-RESIDENTIAL FIRE USER FEE SCHEDULE BY RESOLUTION; AMENDING SECTION 30-53, "APPLICABILITY; COLLECTION; REVIEW"; PROVIDING FOR A NEW SECTION TITLE OF "APPLICABILITY; REVIEW"; PROVIDING FOR DELETION OF REQUIREMENT OF COUNCIL REVIEW OF USER FEE RATES ON FIVE (5) YEAR INTERVAL BASIS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That Ordinance 6015, enacted on October 6, 2009, that intended to repeal Chapter 30, Article III, Sections 30-50 through 30-54, on the effective date of October 1, 2010, is hereby repealed.

Section 2. That Chapter 30, Article III, Sections 30-50 through 30-59, of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

ARTICLE III. EMERGENCY FIRE SERVICE USER FEE

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services for which a customer is billed in accordance with the city's utility billing system.

EXHIBIT

Fiscal Year means the fiscal year from October 1 of each year to September 30 of the following year.

Sec. 30-51. Findings and background.

The city council finds and declares as follows:

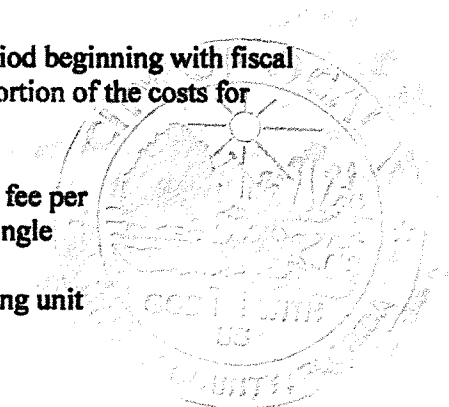
- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) Florida Statute, §166.201 authorizes a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.
- (d) The benefits of emergency fire service received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.
- (e) Insufficient funding is available from other general fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (f) Imposing an emergency fire service user fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (g) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (h) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

Sec. 30-52. Emergency fire service user fee imposed.

To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five-year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) **Residential fee.** All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit



for the residential class is as follows:

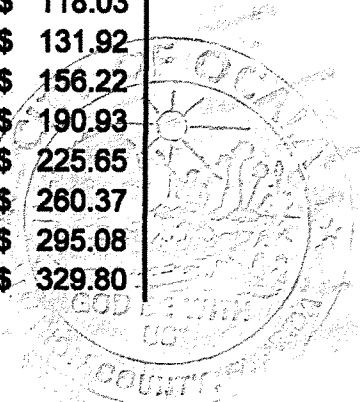
<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>
\$12.00	\$14.30	\$14.30	\$14.30

(b) The residential user fee for Fiscal Year 2011 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2010) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the user fee rate by resolution for the next Fiscal Year. Should city council not adopt a new residential user fee rate for any given Fiscal Year, it shall remain the same rate as that imposed for the previous Fiscal Year.

(c) Non-residential. Non-residential properties are classified as Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

**Fire Services Fee Schedule for Institutional, Governmental and
Commercial/Industrial (C/I) Property**

<u>Sq. Ft. Range</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80



50,001	-	60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001	-	70,000	\$ 356.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001	-	80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001	-	90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001	-	100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001	-	120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001	-	140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001	-	160,000	\$ 821.86	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001	-	180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001	-	200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19
200,001	-	250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001	-	300,000	\$1,506.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001	>		\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

(d) The non-residential user fee schedule for Fiscal Year 2012 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2011) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the non-residential user fee rate schedule by resolution for the next Fiscal Year. Should city council not adopt a new non-residential user fee rate schedule for any given Fiscal Year, the schedule shall remain the same as that imposed for the previous Fiscal Year.

Sec. 30-53. Applicability; collection.

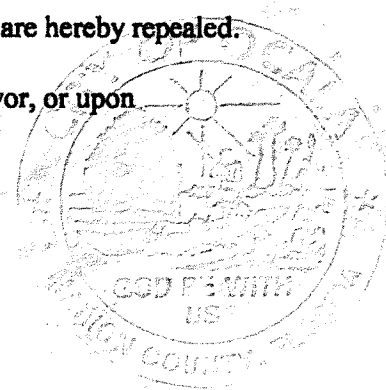
- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.
- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manor as that used with all other portions of the bill for utility services.

Sec. 30-54 - 30-59. Reserved.

Section 3. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

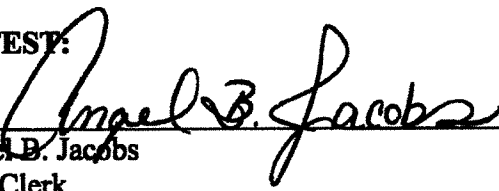
Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.

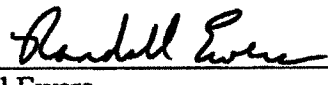


CITY OF OCALA

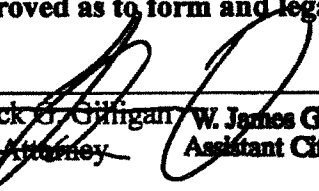
By: 
Reuben Kent Guinn
President, Ocala City Council

ATTEST:
By: 
Angel B. Jacobs
City Clerk

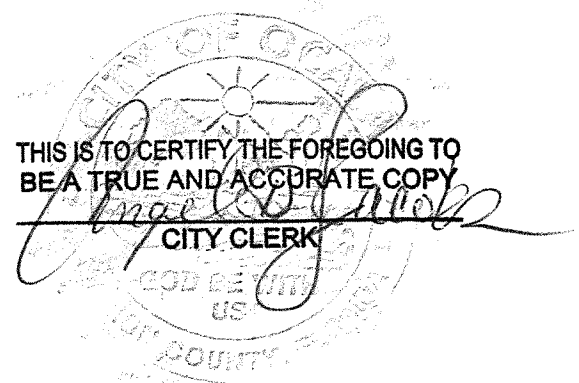
Approved/Denied by me as Mayor of the City of Ocala, Florida, on May 4th, ²⁰¹⁰~~2009~~ ^{RC}

By: 
Randall Ewers
Mayor

Approved as to form and legality:

By: 
~~Patrick G. Gilligan~~ **W. James Gooding III**
~~City Attorney~~ **Assistant City Attorney**

Ordinance No.	2010-43
Introduced:	March 30, 2010
Adopted:	May 4, 2010
Legal Ad No:	SF06151801 – April 2, 2010
Tabled:	April 20, 2010



EXHIBIT

J

CASE SEARCH

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CASE INFORMATION

Case Number: 42-2011-CA-003112-XXXX-XX
File Date: 10/14/2011
Judge: EDWARD L SCOTT

Plaintiff : CITY OF OCALA
 ATTORNEY: BRANNOCK STEVEN L
 ATTORNEY: GILLIGAN PATRICK GERALD

Defendant : THE SCHOOL BOARD OF MARION COUNTY FLORIDA
 ATTORNEY: SEIGLE SUSAN MACON

Dockets

Date	Event	Count	Party	Amount
01/01/2014	JUDGE REASSIGNED			\$0.00
12/20/2013	DESIGNATION OF EMAIL ADDRESS		THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
12/19/2013	RESPONSE TO MOTION PLAINTIFFS RESPONSE TO DEFENDANT MOTION TO DISMISS SECOND AMENDED COMPLAINT WITH PREJUDICE AND INCORPORATED MEMORANDUM OF LAW			\$0.00
12/09/2013	MOTION TO DISMISS SECOND AMENDED COMPLAINT		THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
11/18/2013	WAIVER			\$0.00
11/18/2013	EXHIBIT			\$0.00
11/18/2013	AMENDED PETITION/COMPLAINT SECOND AMENDED COMPLAINT		CITY OF OCALA	\$0.00
11/18/2013	EXHIBIT			\$0.00
11/18/2013	EXHIBIT			\$0.00
11/18/2013	AMENDED PETITION/COMPLAINT SECOND AMENDED COMPLAINT		CITY OF OCALA	\$0.00
11/08/2013	ORDER GRANTING MOTION GRANTING DEFT'S MOTION TO DISMISS; PLTF HAS 10 DAYS TO FILE A SECOND AMENDED COMPLAINT FROM DATE OF THIS ORDER			\$0.00
11/08/2013	CORR/MEMO TO JUDGES OFFICE			\$0.00
11/08/2013	CORR/MEMO TO JUDGES OFFICE			\$0.00
10/21/2013	MEMORANDUM OF LAW		THE SCHOOL BOARD OF MARION COUNTY	\$0.00

10/21/2013	MEMORANDUM OF LAW	CITY OF OCALA FLORIDA	\$0.00
	DFNTS MEMORANDUM OF LAW IN OPPOSITION TO PLNTFS MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND CANCEL HEARING		
10/18/2013	EXHIBIT	CITY OF OCALA	\$0.00
	EXHIBIT 2		
10/18/2013	EXHIBIT	CITY OF OCALA	\$0.00
	EXHIBIT 1		
10/18/2013	AMENDED PETITION/COMPLAINT	CITY OF OCALA	\$0.00
	SECOND		
10/18/2013	MOTION FOR LEAVE TO AMEND	CITY OF OCALA	\$0.00
	PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND CANCEL DEFENDANT'S MOTION TO DISMISS HEARING WITH INCORPORATED MEMORANDUM OF LAW		
08/06/2013	CORR/MEMO TO JUDGES OFFICE		\$0.00
08/02/2013	NOTICE OF HEARING	CITY OF OCALA	\$0.00
	SET FOR OCTOBER 24, 2013 AT 9:00 AM		
08/01/2013	CORR/MEMO TO JUDGES OFFICE		\$0.00
07/30/2013	MANDATE FROM 5TH DCA		\$0.00
	DCA CASE # 5D12-1257 AND 5D12-1741		
	AFFIRMED		
08/29/2012	DESIGNATION OF EMAIL ADDRESS	CITY OF OCALA	\$0.00
08/22/2012	DESIGNATION OF EMAIL ADDRESS	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	FILED DOCUMENT		
08/20/2012	DESIGNATION OF EMAIL ADDRESS	CITY OF OCALA	\$0.00
06/01/2012	EVIDENCE RECORD FORM	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
06/01/2012	EVIDENCE RECORD FORM	CITY OF OCALA	\$0.00
05/31/2012	CORR/MEMO FROM JUDGES OFFICE		\$0.00
	RE: EVIDENCE		
05/21/2012	CORR/MEMO TO JUDGES OFFICE	CITY OF OCALA	\$0.00
05/10/2012	ORDER FROM 5TH DCA		\$0.00
	GRANTING AGREED MOTION TO CONSOLIDATE. (COPY		
05/04/2012	ACKNOWLEDGMENT OF NEW CASE NO		\$0.00
	FROM 5TH DCA - 5D12-1741		
04/30/2012	EVIDENCE RECORD FORM	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
04/30/2012	EVIDENCE RECORD FORM		\$0.00
	TRANSCRIPT OF		

04/30/2012	TRANSCRIPT OF HEARING	CITY OF OCALA	\$0.00
	ON AMENDED EMERGENCY MOTION FOR TEMP INJUNCTION, HEARD ON 04/11/12 BEFORE JUDGE SINGBUSH		
04/30/2012	NOTICE OF FILING	CITY OF OCALA	\$0.00
	TRANSCRIPT OF HEARING		
04/25/2012	TRANSMITTAL LETTER TO 5TH DCA		\$0.00
04/24/2012	ORDER ON MOTION	CITY OF OCALA	\$0.00
	PLTFS AMENDED EMERGENCY MOTION FOR TEMPORARY INJUNCTION - DENIED		
04/24/2012	NOTICE OF APPEAL	CITY OF OCALA	\$0.00
	ON NON-FINAL ORDER		
04/24/2012	CORR/MEMO TO CLERKS OFFICE	CITY OF OCALA	\$0.00
04/24/2012	ASM: APPEAL FF TO DCA/SC CA	CITY OF OCALA	\$100.00
04/12/2012	ORDER FROM 5TH DCA		\$0.00
04/11/2012	LEGAL EXCERPTS/CASE LAW	CITY OF OCALA	\$0.00
	4/10/12 LETTER TO JUDGE SINGBUSH WITH ATTACHED EXCERPTS FROM 3/29/12 HEARING		
04/11/2012	CORR/MEMO TO JUDGES OFFICE	CITY OF OCALA	\$0.00
04/10/2012	ORDER FROM 5TH DCA		\$0.00
04/10/2012	NOTICE OF HEARING	CITY OF OCALA	\$0.00
	APRIL 11, 2012 AT 10AM		
04/09/2012	TRANSCRIPT OF HEARING		\$0.00
	EVIDENTIARY HEARING ON MARCH 29, 2012 ON PLTF'S AMENDED EMERGENCY MOTION FOR TEMPORARY INJUNCTION		
04/09/2012	NOTICE OF FILING	CITY OF OCALA	\$0.00
	TRANSCRIPT OF EVIDENTIARY HEARING		
04/03/2012	ACKNOWLEDGMENT OF NEW CASE NO		\$0.00
	RE: APPEAL		
03/27/2012	TRANSCRIPT	CITY OF OCALA	\$0.00
	OF EVIDENTIARY HEARING ON DEFENDANT'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION ON 2/20/12		
03/27/2012	NOTICE OF FILING	CITY OF OCALA	\$0.00
03/27/2012	CORR/MEMO TO CLERKS OFFICE	CITY OF OCALA	\$0.00
03/27/2012	RESPONSE TO MOTION	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	DEFENDANT'S RESPONSE TO CITY'S AMENDED EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW		
03/22/2012	EVIDENCE RECORD FORM	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
03/22/2012	EVIDENCE RECORD FORM	CITY OF OCALA	\$0.00
	NOTICE OF		

03/19/2012	NOTICE OF APPEARANCE	CITY OF OCALA	\$0.00
	FOR PLTF - STEVEN L BRANNOCK/BRANNOCK & HUMPHRIES		
03/16/2012	NOTICE OF APPEAL OF NON-FINAL ORDER	CITY OF OCALA	\$0.00
03/16/2012	ASM: APPEAL FF TO DCA/SC CA	CITY OF OCALA	\$100.00
03/09/2012	REPLY	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW		
03/07/2012	NOTICE OF HEARING	CITY OF OCALA	\$0.00
	MARCH 29, 2012 AT 2:45PM		
03/02/2012	RESPONSE TO MOTION	CITY OF OCALA	\$0.00
	PLAINTIFF'S RESPONSE TO MOTION TO DISMISS		
03/01/2012	CLERKS NOTE TO FILE NO DOC #		\$0.00
	AMENDED EMERGENCY MOTION FOR TEMPORARY INJUNCTION SENT TO JUDGE SINGBUSH'S LAW CLERK		
03/01/2012	EMERGENCY MOTION	CITY OF OCALA	\$0.00
	AMENDED EMERGENCY MOTION FOR TEMPORARY INJUNCTION		
02/29/2012	MOTION FOR	CITY OF OCALA	\$0.00
	EXTENSION OF TIME		
	PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO MOTION TO DISMISS		
02/23/2012	ORDER GRANTING MOTION	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	DEFTS MOTION FOR TEMPORARY INJUNCTION. INJUNCTION SHALL REMAIN IN PLACE UNTIL FURTHER ORDER OF THIS COURT.		
02/21/2012	DELETED DOC NUMBER SHEET		\$0.00
02/21/2012	MEMORANDUM OF LAW	CITY OF OCALA	\$0.00
02/21/2012	CORR/MEMO TO JUDGES OFFICE	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
02/20/2012	SUPPLEMENTAL	CITY OF OCALA	\$0.00
	SUPPLEMENTAL RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW		
02/20/2012	EMERGENCY MOTION	CITY OF OCALA	\$0.00
	EMERGENCY MOTION FOR TEMPORARY INJUNCTION		
02/17/2012	ORDER TO RESPOND		\$0.00
	PLTF HAS 10 DAYS TO FILE RESPONSE TO DEFTS MOTION TO DISMISS. DEFT THEN HAS 5 DAYS TO REPLY; AND, ORDER ESTABLISHING MOTION PRACTICE PROCEDURE		
02/17/2012	RESPONSE TO MOTION	CITY OF OCALA	\$0.00
	RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW AND MOTION TO STRIKE		

02/16/2012	NOTICE OF HEARING	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	ON DEFTS EMERGENCY MOTION FOR TEMPORARY INJUNCTION, SET FOR 02/20/12 AT 4:15 PM, ROOM 4017		
02/14/2012	COPY OF:(SEE TEXT DESCRIPTION)	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	MOTION TO DISMISS AND MEMORANDUM OF LAW		
02/14/2012	COPY OF:(SEE TEXT DESCRIPTION)	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	COPY OF EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW		
02/14/2012	CLERKS NOTE TO FILE NO DOC #		\$0.00
	EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND MOTION TO DISMISS SENT TO THE LAW CLERK		
02/14/2012	MOTION TO DISMISS	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	MOTION TO DISMISS AND MEMORANDUM OF LAW		
02/14/2012	EMERGENCY MOTION	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW		
02/01/2012	ORIGINAL SUMMONS RETURNED	CITY OF OCALA	\$0.00
	ISSUED TO SCHOOL BOARD OF MARION COUNTY, FL, AND COPY OF ACCEPTANCE OF SERVICE, ATTACHED TO NOTICE OF FILING		
01/26/2012	ACCEPTANCE OF SERVICE	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
	OF PROCESS BY BEVERLY A MORRIS ESQ, FOR THE SCHOOL BOARD OF MARION COUNTY, FL, ON 01/24/12		
01/26/2012	CORR/MEMO TO CLERKS OFFICE	THE SCHOOL BOARD OF MARION COUNTY FLORIDA	\$0.00
01/23/2012	SUMMONS ISSUED		\$0.00
	SCHOOL BOARD OF MARION COUNTY FLORIDA		
01/23/2012	ASM: ISSUE SUMMONS- CA	CITY OF OCALA	\$10.00
01/20/2012	AMENDED PETITION/COMPLAINT	CITY OF OCALA	\$0.00
10/24/2011	ORDER OF REFERRAL TO MEDIATION		\$0.00
	ORDER REFERRING CASE TO MEDIATION		
10/24/2011	CORR/MEMO TO JUDGES OFFICE	CITY OF OCALA	\$0.00
10/18/2011	JOINT MOTION		\$0.00
	JOINT MOTION TO REFER CASE TO MEDIATION		
10/14/2011	PETITION/COMPLAINT		\$0.00
	CONTRACTS AND INDEBTEDNESS		

10/14/2011	CIVIL COVER SHEET		\$0.00
10/14/2011	PETITION/COMPLAINT NO DOC#		\$0.00
10/14/2011	ASM:GENERAL CIRCUIT CIVIL CASE	CITY OF OCALA	\$400.00

Payments

Date	Receipt #	Event	Party	Amount
10/14/2011	V-90426	PAY:GENERAL CIRCUIT CIVIL CASE	CITY OF OCALA	\$400.00
01/23/2012	V-93261	PAY: ISSUE SUMMONS- CA	CITY OF OCALA	\$10.00
03/16/2012	V-95025	PAY: APPEAL FF TO DCA/SC CA	CITY OF OCALA	\$100.00
04/24/2012	V-96160	PAY: APPEAL FF TO DCA/SC CA	CITY OF OCALA	\$100.00

* bold records have been voided

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*** FILED: MARION COUNTY, FL DAVID R. ELLSPERMANN, CLERK 11/18/2013 15:12:35 ***

IN THE CIRCUIT COURT, OF THE
FIFTH JUDICIAL CIRCUIT, IN AND
FOR MARION COUNTY, FLORIDA

CITY OF OCALA,
a Florida municipal corporation,

Plaintiff,

v.

CASE NO: 2011-3112-CA-G

THE SCHOOL BOARD OF
MARION COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Defendant.

_____ /

SECOND AMENDED COMPLAINT

Plaintiff, the City of Ocala, a Florida municipal corporation ("City") sues
Defendant, The School Board of Marion County, Florida, a political subdivision of the
State of Florida ("School Board") and states:

Count I. Declaratory Decree and Injunctive Relief – Fire User Fees

1. This is a suit for declaratory judgment and supplemental damages
exceeding \$15,000, pursuant to sections 86.011-86.111, Florida Statutes.

2. City is a Florida municipal corporation organized under the laws of
Florida.

3. School Board is a political subdivision of the State of Florida.

4. In 2006, by lawful ordinance, City imposed on each residential and
nonresidential premise located within the city limits a monthly user fee for emergency
fire service based on the equitable portion of the cost of providing such services.

5. This fire user fee was codified at sections 30-50 through 30-53 of the City
of Ocala Code of Ordinances.

6. This user fee applied to all property owners within City and is intended to supplement fire service to the citizens, businesses and governmental entities requiring fire service within the city limits of City.

7. The fire user fee was imposed pursuant to City's constitutional home rule authority and pursuant to section 166.201, Florida Statutes, authorizing a municipality to raise funds by the imposition of user fees authorized by ordinance which are necessary for the conduct of municipal government.

8. A copy of the current ordinance in its entirety is attached hereto as Exhibit "1".

9. The fire user fee is assessed to property owners within the city limits on a monthly basis as part of the utility bills submitted to City's utility customers.

10. School Board is a property owner within City.

11. School Board is a utility customer of City that receives utility services, including electric service, water and sewer services and stormwater services. School Board has a statutory obligation to provide for these services. Florida Statute, §1001.42(11)(c), states that the School Board must "provide adequately for the proper maintenance and upkeep of school plants, so that students may attend school without sanitary or physical hazards, and provide for the ... utilities necessary for the operation of the schools." Florida Statute §1001.42(12)(i) mandates that the School Board shall "contract for materials, supplies, and services needed for the school district system."

12. School Board has asserted that it was not obligated to pay the fire user fee pursuant to section 1013.371(1)(a), Florida Statutes. That statute reads, in pertinent part:

- (a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees.

13. In addition to the claimed statutory exemption, School Board may claim other legal reasons for not paying the fire user fee.

14. Since January 1, 2007, City has submitted utility bills to School Board, which bills included the ordinance authorized fire user fee.

15. School Board has failed to pay the fire user fee portion of the bill and owes City as of October 13, 2011, \$572,265.70 with interest since January 1, 2007. That amount will increase monthly as long as School Board continues to refuse to pay this legal indebtedness. The actual bills are voluminous and will be provided to Defendant in digital format.

16. School Board has failed to pay the legally imposed fire user fee and continues to refuse to make payment despite demand.

17. City has complied with all conditions precedent to bringing this action against School Board.

18. City is in doubt as to its rights under the Ordinance.

19. Because of School Board's refusal to pay the fire user fee required by the Ordinance, City has retained the services of the undersigned attorneys and is obligated to pay a reasonable fee for their services.

20. WHEREFORE, City demands a declaratory decree that School Board is legally obligated to pay the fire user fee imposed by City's fire user fee ordinance, and a supplemental judgment for damages, pre-judgment interest, and the reasonable attorneys' fees and costs incurred for bringing this action.

Count II. Declaratory Decree and Injunctive Relief – Stormwater Fees

21. This is a suit for declaratory judgment and supplemental damages exceeding \$15,000, pursuant to section 86.011-86.111, Florida Statutes.

22. City re-alleges paragraphs 2, 3, 10, and 11 above and incorporates them by reference herein.

23. In 1985, City imposed by lawful ordinance on each residential and nonresidential premise located within the city limits a monthly user fee for stormwater utility services based on the equitable portion of the cost of providing such services.

24. This stormwater utility user fee was codified at sections 70-441 through 70-445 of the City of Ocala Code of Ordinances.

25. This user fee applied to all property owners within City and is intended to aid City's management of potentially destructive stormwater, as well as design, construct, operate, maintain and administer the stormwater collection and treatment system within the city limits of Ocala.

26. The stormwater utility services user fee is imposed pursuant to City's constitutional home rule authority and pursuant to sections 166.201, Florida Statutes, authorizing a municipality to raise funds by the imposition of user fees authorized by ordinance which are necessary for the conduct of municipal government, as well as by

section 403.0893, Florida Statutes, authorizing a municipality to create a stormwater utility and create user fees to plan, construct, operate, and maintain a stormwater utility.

27. A copy of the current ordinance in its entirety is attached hereto as Exhibit "2".

28. The stormwater utility user fee is assessed to property owners within the city limits on a monthly basis as part of the utility bills submitted to City's utility customers.

29. On November 8, 2011, School Board voted to discontinue paying for the stormwater utility services that it receives from City beginning with the billing of November 2011 and to proceed monthly thereafter.

30. Since the implementation of the stormwater utility user fee, City has submitted utility bills to School Board, which bills included the ordinance authorized stormwater utility user fee.

31. School Board has failed to pay the stormwater utility user fee portion of the bill for November and owes City as of December 13, 2011, \$19,000. That amount will increase monthly as long as School Board continues to refuse to pay this legal indebtedness.

32. School Board has failed to pay the legally imposed stormwater utility user fee and continues to refuse to make payment despite demand.

33. City has complied with all conditions precedent to bring this action against School Board.

34. City is in doubt as to its rights under the Ordinance.

35. Because of School Board's refusal to pay the stormwater utility user fee required by the Ordinance, City has retained the services of the undersigned attorneys and is obligated to pay a reasonable fee for their services.

36. WHEREFORE, City demands a declaratory decree that School Board is legally obligated to pay the stormwater utility user fee imposed by City of Ocala stormwater utility ordinance, an injunction requiring School Board to either stop disposing its stormwater runoff through City's stormwater utility system or pay City's reasonable stormwater utility user fees so long as School Board continues to dispose of its stormwater runoff through City's system, and a supplemental judgment for damages, pre-judgment interest, and the reasonable attorneys' fees and costs incurred for bringing this action.

Count III. Mandamus – Stormwater Fees

37. This is an action for the issuance of a writ of mandamus to compel School Board to satisfy stormwater utility service fee liens in excess of \$15,000.

38. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

39. Stormwater utility services have been furnished and are continuing to be furnished to premises owned by School Board.

40. City is permitted to charge user fees. See § 166.201, Fla. Stat. The stormwater utility services fees charged by City are valid user fees, which School Board is not statutorily exempt from paying. See *City of Gainesville v. State*, 863 So. 2d 138, 141 (Fla. 2003); § 403.0893, Fla. Stat.; *City of Clearwater v. Sch. Bd. of Pinellas County*, 905 So. 2d 1051, 1053 (Fla. 2d DCA 2005).

41. City is permitted to enforce the receipt and collection of the stormwater utility services fees "in the manner prescribed by ordinance" *See* § 166.201, Fla. Stat. Pursuant to local ordinance, the fees which City charged School Board for stormwater utility services constitute a lien against School Board premises. *See* City Ordinance 70-686(e); *see also Stone v. Town of Mexico Beach*, 348 So. 2d 40, 42 (Fla. 1st DCA 1977) (Municipalities may impose a lien on real property for the failure to pay service charges.). The liens "became effective and binding as such lien from the date upon which the account becomes due, unpaid and in arrears." *See* City Ordinance 70-686(e).

42. Pursuant to local ordinance, such liens "shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts." *See* City Ordinance 70-686(e).

43. The stormwater utility liens are subject to foreclosure pursuant to City Ordinance 70-686(e). Further, the collection and enforcement of payment related to the stormwater utility liens may be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

44. School Board has a nondiscretionary, ministerial, legal duty to City to pay the stormwater utility services fees charged by City. *See* City Ordinance 70-443.

45. City has a clearly established legal right to have School Board perform this nondiscretionary duty. *See* City Ordinances 70-443; 70-686(e).

46. Pursuant to applicable law, mandamus is available to enforce the stormwater utility liens against School Board. *See Remington Cmty. Dev. Dist. v. Educ. Found. of Osceola, etc.*, 941 So. 2d 15, 18 (Fla. 5th DCA 2006).

47. City is entitled to fees and costs incurred in collecting the past due stormwater utility charges. *See* City Ordinance 70-686(e).

48. City has no other legal method for redressing the wrong or of obtaining the relief to which it is entitled.

49. WHEREFORE, City requests that this Court issue a writ of mandamus compelling School Board to satisfy the stormwater utility service fee liens on its premises, an award of fees and costs pursuant to City Ordinance 70-686(e), and any other relief as this Court deems just and proper.

Count IV. Mandamus – Fire User Fees

50. This is an action for the issuance of a writ of mandamus to compel School Board to satisfy fire user fee liens in excess of \$15,000.

51. City re-alleges paragraphs 2 through 11, 14 through 17, and 19 above and incorporates them by reference herein.

52. Emergency fire services have been furnished and are continuing to be furnished to premises owned by School Board.

53. School Board is authorized to charge School Board user fees for emergency fire services. *See* §166.201, Fla. Stat.; City Ordinance 30-51. Such fees are valid user fees, which School Board is not statutorily exempt from paying.

54. City is permitted to enforce the receipt and collection of the emergency fire user fees “in the manner prescribed by ordinance” *See* § 166.201, Fla. Stat.

Pursuant to local ordinance, the fees which City charged School Board for emergency fire services constitute a lien against School Board premises. *See* City Ordinance 30-53; City Ordinance 70-686; *Stone v. Town of Mexico Beach*, 348 So. 2d 40, 42 (Fla. 1st DCA 1977) (Municipalities may impose a lien on real property for the failure to pay service charges.). The liens "became effective and binding as such lien from the date upon which the account becomes due, unpaid and in arrears." *See* City Ordinance 70-686(e).

55. Pursuant to local ordinance, such liens "shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts." *See* City Ordinance 70-686(e).

56. The fire user fee liens are subject to foreclosure pursuant to City Ordinance 70-686(e). Further, the collection and enforcement of payment related to the fire user fee liens may be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

57. School Board has a nondiscretionary, ministerial, legal duty to City to pay the fire user fees charged by City. *See* City Ordinance 30-52 to 30-53; City Ordinance 70-686.

58. City has a clearly established legal right to have School Board perform this nondiscretionary duty. *See* City Ordinance 30-53; City Ordinance 70-686.

59. Pursuant to applicable law, mandamus is available to enforce the fire user fee liens against School Board. *See Remington Cmty. Dev. Dist. v. Educ. Found. of Osceola, etc.*, 941 So. 2d 15, 18 (Fla. 5th DCA 2006).

60. City is entitled to fees and costs incurred in collecting the past due emergency fire services charges. *See City Ordinance 70-686(e)*.

61. City no other legal method for redressing the wrong or of obtaining the relief to which it is entitled.

62. WHEREFORE, City requests that this Court issue a writ of mandamus compelling School Board to satisfy the fire user fee liens on its premises, an award of fees and costs pursuant to City Ordinance 70-686(e), and any other relief as this Court deems just and proper.

Count V. Nuisance

63. City re-alleges paragraphs 2, 3, 10, 11, 23 through 31, and 35 above and incorporates them by reference herein.

64. City owns the stormwater utility system adjacent to or in close proximity to the properties owned by School Board within City.

65. School Board is substantially interfering with City's stormwater utility system without City's permission or pursuant to any agreement with City, by disposing of its stormwater onto City's property and into City's stormwater system without permission and without payment of the utility fee.

66. School Board's actions and/or inactions in continuing to force City to process its stormwater without compensation and without any enforceable agreement between the parties are unreasonable, unwarranted, and/or unlawful.

67. School Board's actions and/or inactions are interfering with City's right to the use and enjoyment of its property, burdening City's stormwater system, and resulting in damages to City.

68. Each of School Board's properties are engaged in separate acts of nuisance by disposing of their stormwater runoff into City's stormwater system, interfering with City's right to the use and enjoyment of its property and the burdening of City's stormwater utility system.

69. City has a clear legal right to be paid for its stormwater utility services, City has no adequate remedy at law, and City will suffer irreparable harm if it does not receive injunctive relief preventing School Board from interfering with City's right to use and enjoy its property.

70. School Board's use of its property results in an improper diversion of surface water onto City's property. Sovereign immunity does not protect School Board's use of its property in this manner. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207, 209 (Fla. 5th DCA 1997)

71. WHEREFORE, because School Board is intentionally and unreasonably invading City's property rights, its actions and/or inactions constitute a "nuisance," and City is entitled to damages, injunctive relief and such other relief as this Court deems just and proper.

Count VI. Trespass

72. City re-alleges paragraphs 2, 3, 10, 11, 23 through 31, and 35 above and incorporates them by reference herein.

73. City owns the stormwater utility system adjacent to or in close proximity to the properties owned by School Board within City. School Board has no lawful ownership rights over City's stormwater management services or system.

74. However, School Board knowingly and intentionally continues to dispose of its stormwater runoff onto City's property and into City's utility system without permission and without any agreement with City, which is causing damages to City.

75. School Board's actions in knowingly utilizing City's stormwater utility services and thereby burdening the system, without paying for these services, is without authorization by City and, in fact, is in defiance of City's requests to either cease utilizing City's stormwater services, or pay for those services accordingly.

76. Each of School Board's properties in the City is committing separate acts of trespass by disposing of its stormwater runoff into City's stormwater utility system.

77. City has provided notice to School Board that its actions and/or inactions in utilizing City's stormwater utility services without paying for those services are unlawful.

78. City has a clear legal right to be paid for its stormwater utility services, City has no adequate remedy at law, and City will suffer irreparable harm if it does not receive injunctive relief.

79. School Board's improper diversion of surface water from its property onto City's property is not protected by sovereign immunity. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207, 209 (Fla. 5th DCA 1997).

80. WHEREFORE, School Board's actions constitute "trespassing" and City is entitled to damages and injunctive relief enjoining School Board's further trespass of City's property and such further relief as this Court deems just and proper.

Count VIII. Violation of State Substantive Due Process Clause

81. This is an action seeking injunctive relief and damages in excess of \$15,000 for School Board's violation of City's right to substantive due process under the Florida Constitution.

82. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

83. City is a Florida municipal corporation. Pursuant to Article VIII, section 2(b) of the Florida Constitution, City has both corporate and proprietary powers.

84. Pursuant to its proprietary and corporate powers, City owns, operates, and maintains the stormwater utility system which is adjacent to School Board's properties.

85. City is entitled to exclude School Board from using its stormwater utility system.

86. The stormwater utility service fees charged by City are user fees. *See City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003). These user fees are based upon City's proprietary right to permit other entities to use its stormwater utility system. *See State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994).

87. City may lawfully charge School Board a fee for School Board's use City's stormwater utility system. §166.201, Fla. Stat; §403.0893, Fla. Stat.; *Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

88. Because City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

89. Article I, section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law”

90. By using City’s stormwater utility system without paying the statutorily authorized user fee required for access, School Board has deprived City of a property interest or right without due process of law. *Gulf Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974). The property interest or right that City asserts here is fundamental and deeply rooted in the history and tradition of this Nation.

91. School Board’s refusal to pay City the stormwater utility fees for use of its stormwater utility system is arbitrary and capricious, irrational, or tainted by improper motive.

92. School Board’s action is illegal and violates City’s constitutional rights. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941); *Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

93. WHEREFORE, School Board’s actions violate City’s right to substantive due process under the Florida Constitution, and City requests injunctive relief, damages, pre-judgment interest, attorneys’ fees and costs, and such other relief as this Court deems just and proper.

Count VIII. Violation of Federal Substantive Due Process Clause

94. This action seeks injunctive relief and damages in excess of \$15,000 for School Board's violation of City's right to substantive due process under the United States Constitution. This action is brought pursuant to 42 U.S.C. § 1983.

95. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

96. City is a Florida municipal corporation. Pursuant to Art. VIII, § 2(b), Fla. Const., City has both corporate and proprietary powers.

97. Pursuant to its proprietary and corporate powers, City owns, operates, and maintains the stormwater utility system adjacent to School Board's properties.

98. City is entitled to exclude School Board from using its stormwater utility system.

99. The stormwater utility service fees charged by City are user fees. *See City of Gainesville v. State*, 863 So. 2d 138, 145 (Fla. 2003). These user fees are based upon City's proprietary right to permit other entities to use its stormwater utility system. *See State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994).

100. City may lawfully charge School Board a fee for School Board's use of City's stormwater utility system. §166.201, Fla. Stat.; §403.0893, Fla. Stat.; *Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

101. Because City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

102. The Fourteenth Amendment of the United States Constitution, section 1, provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law. . . ."

103. By using City's stormwater utility system without paying the statutorily authorized user fee required for access, School Board deprives City of a property interest without due process of law. *Gulf Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974).

104. School Board's refusal to pay City the stormwater utility fees for use of its stormwater utility system is arbitrary and capricious, irrational, or tainted by improper motive.

105. School Board's action is illegal and violates City's constitutional rights. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941); *Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

106. WHEREFORE, School Board's actions violate City's right to substantive due process under the United States Constitution, and City requests injunctive relief, damages, pre-judgment interest, attorneys' fees and costs, and such other relief as this Court deems just and proper.

Count IX. Unjust Enrichment – Emergency Fire Services

107. This is an action for unjust enrichment in which City seeks a monetary award in excess of \$15,0000 for emergency fire services it has provided to School Board.

108. City re-alleges paragraphs 2 through 11, 14 through 17, and 19 above and incorporates them by reference herein.

109. With School Board's knowledge, City has conferred a benefit on School Board in the form of emergency fire services.

110. School Board has voluntarily accepted and retained the benefit conferred by City.

111. The circumstances are such that it would be inequitable for the defendant to retain the benefit conferred by City without paying the value thereof to City.

112. Sovereign immunity does not apply to shield School Board's inequitable conduct in continuing to take advantage of City services while refusing to make payment.

113. WHEREFORE, CITY is entitled to compensation from School Board for the value of the emergency fire services which City provided to School Board and such other relief as this Court deems just and proper.

Count X. Unjust Enrichment – Stormwater Services

114. This is an action for unjust enrichment in which City is seeking a monetary award in excess of \$15,0000 for stormwater utility services it has provided to School Board.

115. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

116. With School Board's knowledge, City has conferred a benefit on School Board in the form of stormwater utility services.

117. School Board has voluntarily accepted and retained the benefit conferred by City.

118. The circumstances are such that it would be inequitable for the defendant to retain the benefit conferred by City without paying the value thereof to City.

119. Sovereign immunity does not apply to shield School Board's inequitable conduct in continuing to take advantage of City services while refusing to make payment.

120. WHEREFORE, CITY is entitled to compensation from School Board for the value of the stormwater utility services which City provided to School Board and such other relief as this Court deems just and proper.

Count XI. Inverse Condemnation

121. This is an action for inverse condemnation to recover compensation in excess of \$15,000 for School Board's taking of easements on City property for stormwater drainage purposes. This claim is made under Article X, section 6(b) of the Florida Constitution.

122. City re-alleges paragraphs 2, 3, 10, 11, 23 through 33, and 35 above and incorporates them by reference herein.

123. School Board is a governmental entity with the ability to exercise the power of eminent domain. §1013.24, Fla. Stat.

124. School Board is diverting stormwater, for a public purpose, from its properties onto properties owned by City. Rain and, thus, School Board's diversion of stormwater is a condition that is expected to continually re-occur.

125. School Board's diversion of stormwater onto City property constitutes a nuisance or unreasonable interference with City's property rights. School Board's use of City property deprives City of an essential element in its relationship to its land. *See City of Jacksonville v. Schumann*, 199 So. 2d 727, 729 (Fla. 1st DCA 1967).

126. School Board has not compensated City for its use of City property and it refuses to do so. City has not agreed to let School Board divert water onto City

properties without paying required user fees, nor is School Board otherwise entitled to take such action.

127. School Board's diversion of stormwater onto City's property constitutes a physical invasion of City property and the taking of easements on City property.

128. City is entitled to just compensation for such takings.

129. School Board's actions are interfering with City's right to the use and enjoyment of its property, burdening City's stormwater system, and have diminished the value of City property.

130. Sovereign immunity has no application in these circumstances. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941);

131. WHEREFORE, School Board's actions constitute the taking of easements on City property, and City requests damages, pre-judgment interest, attorneys' fees and costs, and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Defendant's attorneys, Susan Seigle, Esquire, of Dell Graham, P.A., and Beverly A. Morris, Esquire, by E-mail to: sseigle@dellgraham.com; dburch@dellgraham.com; sdanel@dellgraham.com, and beverlymorris@earthlink.net; ; beverlymorrislegalastl@earthlink.net, this 18 day of November, 2013.

GILLIGAN, GOODING & FRANJOLA, P.A.

BY: 

Patrick G. Gilligan, Esquire

Florida Bar No. 375454

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Secondary: llanders@ocalalaw.com

ORDINANCE 2010-43

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING CHAPTER 30, EMERGENCY SERVICES, REPEALING ORDINANCE NUMBER 6015, ENACTED ON OCTOBER 6, 2009, THAT INTENDED TO REPEAL CHAPTER 30, ARTICLE III, SECTIONS 30-50 THROUGH 30-54 OF THE CODE OF ORDINANCES, ON THE EFFECTIVE DATE OF OCTOBER 1, 2010; THEN AMENDING SECTION 30-50, "DEFINITIONS" BY ADDING A DEFINITION OF FISCAL YEAR; AMENDING SECTION 30-52, "EMERGENCY FIRE SERVICE USER FEE IMPOSED" PROVIDING FOR ANNUAL REVIEW, DETERMINATION AND IMPOSITION BY CITY COUNCIL OF THE UPCOMING FISCAL YEAR RESIDENTIAL FIRE USER FEE RATE AND NON-RESIDENTIAL FIRE USER FEE SCHEDULE BY RESOLUTION; AMENDING SECTION 30-53, "APPLICABILITY; COLLECTION; REVIEW"; PROVIDING FOR A NEW SECTION TITLE OF "APPLICABILITY; REVIEW"; PROVIDING FOR DELETION OF REQUIREMENT OF COUNCIL REVIEW OF USER FEE RATES ON FIVE (5) YEAR INTERVAL BASIS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That Ordinance 6015, enacted on October 6, 2009, that intended to repeal Chapter 30, Article III, Sections 30-50 through 30-54, on the effective date of October 1, 2010, is hereby repealed.

Section 2. That Chapter 30, Article III, Sections 30-50 through 30-59, of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows:

ARTICLE III. EMERGENCY FIRE SERVICE USER FEE

Sec. 30-50. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property means a parcel of real property within the city limits which is assigned a unique Parcel identification number by the Marion County Property Appraiser.

Premise means a physical location where the city provides one or more utility services for which a customer is billed in accordance with the city's utility billing system.



Fiscal Year means the fiscal year from October 1 of each year to September 30 of the following year.

Sec. 30-51. Findings and background.

The city council finds and declares as follows:

- (a) The city is committed to providing adequate emergency fire services for its citizens and to the businesses and property located in the city.
- (b) The city council has considered adequate information, including the study developed by the city's fire service fee consultant.
- (c) Florida Statute, §166.201 authorizes a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.
- (d) The benefits of emergency fire service received from properties in the service area are many. First, there is a watch standing, or availability benefit that comes from the availability of fire service. Second, there is a service benefit that comes from actual calls for service to the property classes within the service area. Third, a benefit of the availability of fire service in the city is the availability of, and potentially reduced cost of fire insurance. The level of fire service provided can have an effect upon fire insurance rates with higher levels of service generally resulting in lower insurance rates. Finally, the ability of the city's fire service personnel to intervene in a fire event can potentially save structures or reduce damage to structures.
- (e) Insufficient funding is available from other general fund revenue sources to continue providing the level of emergency fire services that the city desires to provide to the citizens and properties located in the city.
- (f) Imposing an emergency fire service user fee is the most equitable manner of providing the additional funding needed to pay for these services.
- (g) It is the city's plan that the fire service fee will generate a portion of the budgeted operational costs of providing emergency fire services to the city's citizens and properties.
- (h) The fire service fee will be billed to all city properties as a part of the monthly utility bill.

Sec. 30-52. Emergency fire service user fee imposed.

To each residential or non-residential premise located within the city limits there is hereby imposed a monthly fee for emergency fire service based on the equitable portion of the cost of providing such services.

Budgeted fire service costs have been projected for the five-year period beginning with fiscal year 2007 and the following fee schedule has been developed to recover a portion of the costs for each year in the period FY 2007 through FY 2011.

- (a) **Residential fee.** All residential properties will pay the same fee per residential unit. This is true whether the property is classified as a single family residence, mobile home, condominium, or a unit of a duplex, apartment complex, etc. The monthly fee for each residential dwelling unit

for the residential class is as follows:

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY2010</u>
\$12.00	\$14.30	\$14.30	\$14.30

(b) The residential user fee for Fiscal Year 2011 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2010) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the user fee rate by resolution for the next Fiscal Year. Should city council not adopt a new residential user fee rate for any given Fiscal Year, it shall remain the same rate as that imposed for the previous Fiscal Year.

(c) **Non-residential.** Non-residential properties are classified as Institutional, Governmental, or Commercial/Industrial (C/I). It has been determined that the benefit received from emergency fire services for non-residential property is related to the developed space of each premise, but that the benefit increases not directly proportional to square footage, but over broad ranges of developed space. It has also been determined that the benefit received is not materially different among the different non-residential property classes, consequently the fees are the same for all property classes. The schedule of fees for each non-residential premise regardless of use shall be based upon the following schedule:

**Fire Services Fee Schedule for Institutional, Governmental and
Commercial/Industrial (C/I) Property**

<u>Sq. Ft. Range</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
1 - 2,000	\$ 12.00	\$ 14.30	\$ 14.30	\$ 15.20	\$ 15.20
2,001 - 3,000	\$ 13.70	\$ 16.33	\$ 16.33	\$ 17.36	\$ 17.36
3,001 - 4,000	\$ 19.17	\$ 22.86	\$ 22.86	\$ 24.30	\$ 24.30
4,001 - 5,000	\$ 24.65	\$ 29.39	\$ 29.39	\$ 31.24	\$ 31.24
5,001 - 6,000	\$ 30.13	\$ 35.93	\$ 35.93	\$ 38.19	\$ 38.19
6,001 - 7,000	\$ 35.61	\$ 42.46	\$ 42.46	\$ 45.13	\$ 45.13
7,001 - 8,000	\$ 41.09	\$ 48.99	\$ 48.99	\$ 52.07	\$ 52.07
8,001 - 10,000	\$ 49.33	\$ 58.79	\$ 58.79	\$ 62.49	\$ 62.49
10,001 - 12,000	\$ 60.27	\$ 71.85	\$ 71.85	\$ 76.37	\$ 76.37
12,001 - 14,000	\$ 71.23	\$ 84.92	\$ 84.92	\$ 90.26	\$ 90.26
14,001 - 16,000	\$ 82.18	\$ 97.98	\$ 97.98	\$ 104.15	\$ 104.15
16,001 - 18,000	\$ 93.14	\$ 111.04	\$ 111.04	\$ 118.03	\$ 118.03
18,001 - 20,000	\$ 104.10	\$ 124.11	\$ 124.11	\$ 131.92	\$ 131.92
20,001 - 25,000	\$ 123.28	\$ 146.97	\$ 146.97	\$ 156.22	\$ 156.22
25,001 - 30,000	\$ 150.67	\$ 179.63	\$ 179.63	\$ 190.93	\$ 190.93
30,001 - 35,000	\$ 178.07	\$ 212.29	\$ 212.29	\$ 225.65	\$ 225.65
35,001 - 40,000	\$ 205.46	\$ 244.95	\$ 244.95	\$ 260.37	\$ 260.37
40,001 - 45,000	\$ 232.86	\$ 277.61	\$ 277.61	\$ 295.08	\$ 295.08
45,001 - 50,000	\$ 260.25	\$ 310.27	\$ 310.27	\$ 329.80	\$ 329.80

50,001	-	60,000	\$ 301.35	\$ 359.26	\$ 359.26	\$ 381.87	\$ 381.87
60,001	-	70,000	\$ 358.14	\$ 424.58	\$ 424.58	\$ 451.30	\$ 451.30
70,001	-	80,000	\$ 410.93	\$ 489.90	\$ 489.90	\$ 520.73	\$ 520.73
80,001	-	90,000	\$ 465.72	\$ 555.22	\$ 555.22	\$ 590.16	\$ 590.16
90,001	-	100,000	\$ 520.51	\$ 620.54	\$ 620.54	\$ 659.59	\$ 659.59
100,001	-	120,000	\$ 602.70	\$ 718.52	\$ 718.52	\$ 763.74	\$ 763.74
120,001	-	140,000	\$ 712.28	\$ 849.16	\$ 849.16	\$ 902.60	\$ 902.60
140,001	-	160,000	\$ 821.88	\$ 979.80	\$ 979.80	\$1,041.46	\$1,041.46
160,001	-	180,000	\$ 931.44	\$1,110.44	\$1,110.44	\$1,180.32	\$1,180.32
180,001	-	200,000	\$1,041.03	\$1,241.08	\$1,241.08	\$1,319.19	\$1,319.19
200,001	-	250,000	\$1,232.79	\$1,469.69	\$1,469.69	\$1,562.19	\$1,562.19
250,001	-	300,000	\$1,508.75	\$1,796.29	\$1,796.29	\$1,909.35	\$1,909.35
300,001	>		\$1,643.74	\$1,959.59	\$1,959.59	\$2,082.92	\$2,082.92

(d) The non-residential user fee schedule for Fiscal Year 2012 shall be set by city council prior to the beginning of that Fiscal Year (October 1, 2011) by an adopted user fee resolution. Annually thereafter prior to the beginning of the next Fiscal Year city council shall adopt the non-residential user fee rate schedule by resolution for the next Fiscal Year. Should city council not adopt a new non-residential user fee rate schedule for any given Fiscal Year, the schedule shall remain the same as that imposed for the previous Fiscal Year.

Sec. 30-53. Applicability; collection.

- (a) The emergency fire services fee imposed by this Article shall be imposed on each developed property within the city limits beginning January 1, 2007. Where a property has multiple premises, each premise will be assessed a separate fee based on the number of residential units, for residential property, or the square footage of developed space, for non-residential property, as appropriate. Only vacant or undeveloped land will be exempt from the fire service fee.
- (b) The city will include the fire service fee on the utility bills for all developed properties in the city. Collection enforcement will be in the same manner as that used with all other portions of the bill for utility services.

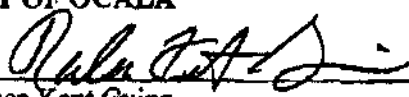
Sec. 30-54 - 30-59. Reserved.

Section 3. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

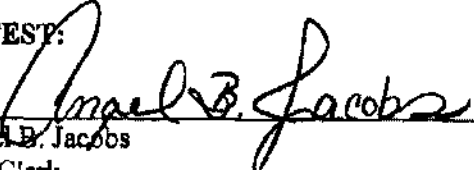
Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.

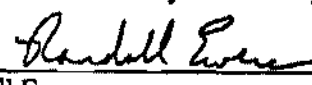
CITY OF OCALA

By: 
Reuben Kent Guinn
President, Ocala City Council

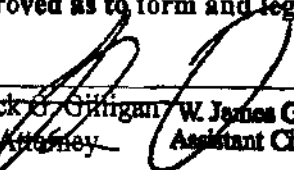
ATTEST:

By: 
Angel B. Jacobs
City Clerk

Approved/Denied by me as Mayor of the City of Ocala, Florida, on May 4th, ²⁰¹⁰~~2009~~ ^{RC}

By: 
Randall Ewers
Mayor

Approved as to form and legality:

By: 
~~Patrick C. O'Hagan~~ **W. James Gooding III**
~~City Attorney~~ **Assistant City Attorney**

Ordinance No.	2010-43
Introduced:	March 30, 2010
Adopted:	May 4, 2010
Legal Ad No:	SF06151801 - April 2, 2010
Tabled:	April 20, 2010



CITY OF OCALA

FIRE SERVICE FEE STUDY

FINAL REPORT
January 8, 2007



Prepared by:

Burton & Associates

EXHIBIT
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Fire Service Fee Study

Final Report

Section I: Introduction

I. Introduction

This report represents the results of an analysis to develop a Fire Service Fee to recover a portion of the costs of fire protection services from properties that benefit from these services provided for the City of Ocala (the City). This study was conducted by Burton & Associates, a firm that specializes in providing rate assessment consulting services to local governments. The law firm of Lewis, Longman & Walker assisted in this study as a sub-consultant to Burton & Associates to ensure that the methodology developed was in accordance with, and met all legal standards required of such fee programs.

The term “fire service” as used in this study refers to the twenty-four hour per day, seven days per week service for fire suppression for the protection of building area and replacement value provided by the City of Ocala to properties located within the limits of the City. The benefit of fire protection service is therefore influenced by the number and size of structures within the limits of the City.

A. Objective and Scope

The objectives of this Study were to:

1. Develop a Fire Service Fee to recover all or a portion of the cost required to provide fire protection service to properties within the City of Ocala City limits, and
2. Develop a Fire Service Impact Fee to recover capital costs associated with providing fire protection service to new development.

Fire Service Fee Study

Final Report

Section I: Introduction

B. Study Procedures

During this study we developed a multi-year financial management plan (FMP) for the provision of Fire Protection Service that recognizes the impacts of continuing to provide the high level of service that has traditionally been provided and providing resources to meet the demands of growth. We accomplished this through interactive work sessions with City staff. During these work sessions we examined the impact of alternative scenarios upon key financial indicators by use of graphical representations projected on a large screen from our computer rate models which were up and running and upon which we conducted alternatives analyses interactively with City staff. In this way we identified the FMP presented in this report that allows the City to meet its fire protection requirements.

In order to initialize our analysis, we obtained the City's historical and budgeted fire protection service financial information. We also obtained the City's five-year fire protection service capital improvement program, including annual renewal and replacement requirements. We documented the City's current fire protection service debt obligations and the related covenants, or promises made lenders, relative to net income coverage requirements, reserves, etc. We also counseled with City staff regarding other assumptions and policies that would affect the provision of fire protection service such as required levels of working capital reserves, earnings on invested funds, escalation rates for operating costs, staffing levels, etc.

All of this information was entered into our Financial Analysis and Management System (FAMS-XL©) interactive model. The FAMS-XL© model produces a multi-year projection of the sufficiency of the City's fire protection service revenues to meet all of its current and projected financial requirements and determines the level of revenue increases necessary in each year to provide sufficient revenues to fund the City's fire protection requirements.

FAMS-XL© also utilizes impact fees and all available unrestricted funds in each year of the projection period to pay for capital projects, in accordance with the rules of

Fire Service Fee Study

Final Report

Section I: Introduction

cash application defined with City staff within the model. This produces a detailed summary of the funding sources to be used for each project in the capital improvements program. To the extent that impact fees, current revenues and unrestricted reserves are not adequate to fund all capital projects in any year of the projection period, the FAMS-XL© model identifies a borrowing requirement to fund those projects, or portions thereof that are determined to be eligible for borrowing. In this way the FAMS-XL© model is used to develop a borrowing program that includes the required borrowing amount by year and the resultant annual debt service obligations of the City for each year in the projection period.

FAMS-XL© was also used to test the consequences of alternative revenue adjustment plans upon key financial parameters of the City such as, debt service coverage, minimum working capital reserve fund balances, additional new debt required to fund capital projects, and the net effect upon the Fire Service Fee of the typical residential property in the City. By using FAMS-XL© in the above referenced interactive work sessions with City staff, we were able to quickly evaluate a range of scenarios and to develop the final scenario for consideration that is presented herein.

Our project team also included the law firm of Lewis, Longman and Walker (LLW). LLW provided legal input during the development of the recommended Fire Service Fees and Fire Service Impact Fee and their legal certification opinion is included in this report.

Fire Service Fee Study Final Report

Section II: Fire Service Fees

II. Fire Service Fees

This section presents the results of the development of Fire Service Fees to recover costs of providing fire protection services and the next section presents the results of the development of Fire Service Impact Fee to recover costs of capital facilities and equipment required to serve the needs of growth.

A. Background

The development of service fees for fire protection service requires that the service for which properties are to be charged confer a special benefit on that property burdened by the special fee. Simply stated, there must be a logical relationship between the service provided and the benefit to real property assessed the Fire Service Fee for the cost of this service.

In order to satisfy this requirement, the costs associated with providing the service must be reasonably apportioned to the properties that receive a benefit from fire protection service. Therefore, the recommended Fire Service Fees provided in this study were developed so that the costs of providing fire protection service will be recovered through service fees to properties in proportion to the benefit received by availability of and/or provision of fire protection service to those properties.

B. Analysis

This section presents an overview of the analysis that was conducted in the study in order to develop Fire Service Fees that are fair and equitable in addition to conforming to legal standards required for such fees.

Fire Service Fee Study

Final Report

Section II: Fire Service Fees

1. Cost of Service

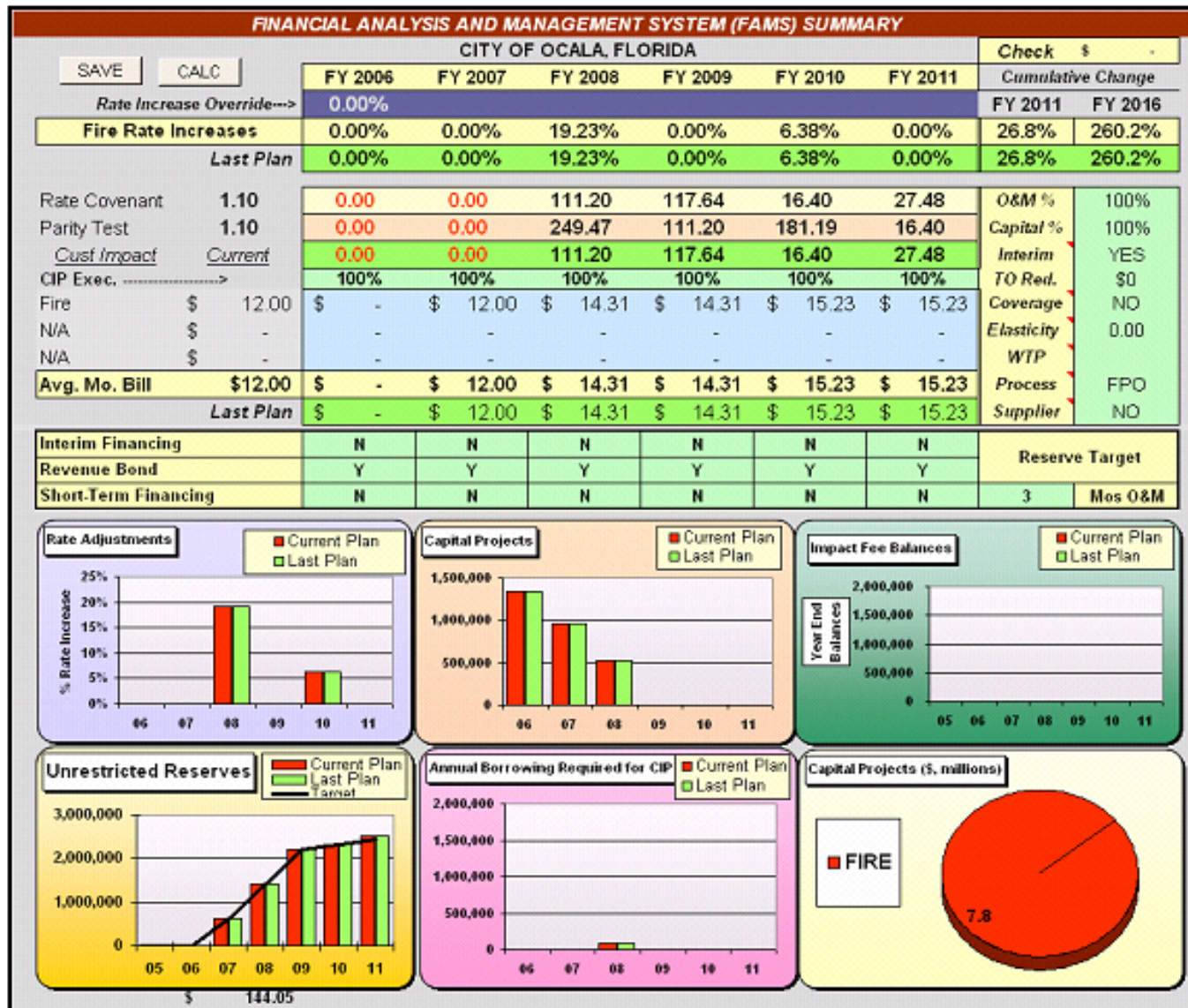
In order to develop the recommended Fire Service Fees presented in this study it was first necessary to determine the projected cost to provide fire protection services to all properties located within the limits of the City. Burton & Associates received from City staff a compilation of costs associated with the provision of fire protection service, exclusive of costs associated with providing Emergency Medical Service (EMS). These costs were loaded into our FAMS-XL© financial forecast model and reviewed with City staff in several interactive work sessions.

The projected costs for providing fire protection services, exclusive of emergency medical services, for FY 2007 were considered to be the “test year” costs for the development of specific Fire Service Fees¹. Also, based upon input from City staff based upon an assessment of other fire service fees and assessments in other communities in Florida, only 44% of the identified fire protection costs were included in the cost basis for the calculation of the fire service fee, in order to keep the fee in line with other similar fees in Florida. The remaining 56% of fire protection costs will continue to be funded from the General Fund. Based on the inclusion of 44% of fire protection costs in the Fire Service Fee, the total costs included in the calculation of the fee was approximately \$5.7 million.

The schedule on the following page presents a summary of the financial plan for providing fire protection service from FY 2007 – FY 2011, including projections of the annual Fire Service Fee² at 44% cost recovery. It is important to note that the underlying revenue and expense projections (see Schedules 4 and 5 of Appendix C) do not reflect any additional revenue or capital and operating cost requirements (namely potential fire stations #7 & #8) that may be necessary as a result of future annexations.

¹ It is important to note that the analysis begins with FY 2005/2006 data, however, the majority of this information serves as base data upon which future year projections of revenue and expenses are based. As such, FY 2005/2006 is not considered to be part of the Financial Management Plan presented herein.

Fire Service Fee Study Final Report Section II: Fire Service Fees



Fire Service Fee Study

Final Report

Section II: Fire Service Fees

2. Allocation of Cost of Service to Property Use Categories

The next step in the process was to allocate or apportion the revenue requirement to property use categories. This first required the determination of property use categories to be included in the Fire Service Fee program. In order to determine the property use categories, this study reviewed historical calls-for-service records provided by the City and property data provided by the Marion County Property Appraiser's Office. Based upon this review it was determined that two primary property uses, residential and non-residential should be recognized in the calculation of the Fire Service Fee.

The revenue requirement for the Fire Service Fee program was then allocated to these property use categories using two criteria: 1) availability benefit and 2) service benefit. Availability benefit relates to the benefit a parcel receives by the "watch-standing" nature of fire protection service. The providers of this fire protection service stand "ready, willing, and able" to provide this service when the need arises. As a result of this availability benefit, insurance premiums are lower than would otherwise be the case without available fire protection service. In addition, overall property value of a benefited parcel is expected to be higher than would also otherwise be the case without fire protection service. The basis by which availability benefit is measured is by building area. Parcels that have larger building area are protected against larger potential losses than are parcels with smaller building area, thus, parcels that have larger building area receive more availability benefit.

Service benefit relates to the benefit a parcel receives from the actual provision of the fire protection service. Fire protection service by its nature helps protect a property from being damaged by fire. The basis by which this service benefit is measured is typically calls-for-service. The more calls-for-service to a particular property class the more service benefit that property class receives. After a thorough review of the costs of service and based upon discussions with the City of Ocala Fire Service officials, it was determined that costs associated with calls-for-service were marginal. The same facilities, personnel and equipment would be required to provide the availability benefit, independent of

Fire Service Fee Study

Final Report

Section II: Fire Service Fees

calls-for-service and essentially the only incremental cost associated with making calls-for-service is fuel, which is only 0.3% of the total cost of service and, therefore, was determined to not be material enough to warrant allocation of any costs to service benefit. Therefore, in the schedule of Fire Service Fees developed in this study, the entire revenue requirement was allocated to availability benefit and allocated to property classes based upon area of developed square feet.

3. Apportionment Methodology Relative to Benefit

It has been well established that a reasonable method for apportioning fire protection benefits to properties is square feet of developed space. In this study it was determined that within the residential class, the difference in benefit received from Fire Service between differently sized dwelling units was not material, therefore, all residential dwelling units, whether they be single family, mobile home, condos or apartments, will receive the same Fire Service Fee.

It was also determined that the benefit received from Fire Service by non-residential properties 1) was related to the square feet of developed space on each parcel, and 2) was not materially different among the non residential property classes. Therefore, although this Study separates non residential properties into three sub-classes for reporting and analysis purposes, the schedule of Fire Service Fees for each non-residential sub-class are the same.

The specific separation of properties into specific rate classes was done based upon the Department of Revenue (“DOR”) property use codes as identified in the data provided by the Marion County Property Appraiser. The chart on the following page shows the mapping of DOR property use codes into Fire Service Fee rate classes.

Fire Service Fee Study Final Report

Section II: Fire Service Fees

DOR Property Use Code Mapping:

DOR Property Use Code	Property Use Code Description	Fire Service Fee Rate Class
0	Vacant Residential	NA
1	Single Family	RES
2	Mobile Homes	RES
3	Multi Fam- 10 + Units	RES
4	Condos	RES
6	Retirement Homes	INST
7	Misc Residential	RES
8	Multi Family- Less than 10 Units	RES
10	Vacant Commercial	NA
11	Stores, 1 Story	C/I
12	Mixed Use	C/I
13	Department Stores	C/I
14	Supermarkets	C/I
15	Regional Shop Ctrs	C/I
16	Community Shop Ctrs	C/I
17	Office Bldgs, Multi Story	C/I
18	Office Bldgs, Non Prof	C/I
19	Professional Svc Bldgs	C/I
20	Airports	C/I
21	Restaurants	C/I
22	Drive-In Restaurants	C/I
23	Financial Institutions	C/I
24	Insurance Company Offices	C/I
25	Repair Svc Shops (Excludes Auto)	C/I
26	Service Stations	C/I
27	Auto Sales, Repair, Storage	C/I
28	Parking Lots, Mobile Home Parks	RES
29	Wholesale Outlets	C/I
30	Florist, Greenhouses	C/I
31	Drive-In Theaters, Open Stadiums	C/I
32	Enclosed Theaters/Auditoriums	C/I
33	Nightclubs, Bars	C/I
34	Bowling Alleys, Skate Rinks, Pool Halls	C/I
36	Camps	C/I
39	Hotels/Motels	C/I
40	Vacant Industrial	NA
41	Light Manufacturing	C/I
42	Heavy Industrial	C/I
43	Lumber Yards, Sawmills	C/I
44	Packing Plants	C/I
46	Other Food Processing	C/I
47	Mineral Processing	C/I
48	Warehousing, Distribution	C/I
49	Open Storage	C/I
50	Improved Agricultural	C/I
52	Cropland Soil Capability Soil II	C/I
53	Cropland Soil Capability Soil III	C/I
55	Timberland Site Index 80-89	C/I
56	Timberland Site Index 70-79	C/I
57	Timberland Site Index 60-69	C/I
58	Timberland Site Index 50-59	C/I
60	Grazing Land Soil Capability Class I	C/I
61	Grazing Land Soil Capability Class II	C/I
62	Grazing Land Soil Capability Class III	C/I
63	Grazing Land Soil Capability Class IV	C/I
64	Grazing Land Soil Capability Class V	C/I
65	Grazing Land Soil Capability Class VI	C/I
69	Ornamentals, Misc Agricultural	C/I
70	Vacant Institutional	NA
71	Religious Institutions	INST
72	Private Schools and Colleges	C/I
73	Private Hospitals	INST
74	Homes for the Aged (ACLF)	INST
75	Orphanages, other not for profit	INST
76	Mortuaries, Cemeteries	INST
77	Clubs, Lodges, Union Halls	INST
78	Sanitariums, Rest Homes	INST
79	Cultural Organizations	INST
81	Military	GOV
82	Forest, Parks, Recreational Areas	GOV
83	Public County Schools	GOV
84	Colleges	GOV
85	Hospitals	INST
86	County including non municipal	GOV
87	State other than parks, etc	GOV
88	Federal other than parks, etc	GOV
89	Municipal other than parks, etc	GOV
90	Leasehold interests	C/I
91	Utility, Gas and Elec, Telephone	C/I
92	Mining lands, petroleum lands, or gas lands	NA
94	Right-of-way, streets, roads, irrigation channel, ditch, et	NA
95	Rivers & lakes, submerged lands	NA
96	Sewage disposal, solid waste, drainage reservoirs, waste lands, marsh, sand dunes, swamps	C/I
98	Centrally assessed	NA
99	Acreage not zoned agricultural	NA

Property Type	Code
Residential	RES
Commercial / Industrial	C/I
Institutional	INST
Governmental	GOV
N/A (not included in anal	NA

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It was also determined that although the benefit to non-residential properties is related to the amount of developed space, the benefit is not proportionate to increased developed space on a square foot by square foot basis but rather the benefit increases over broader ranges of developed square feet. Therefore, the Fire Service Fee schedules for non-residential properties establish Fire Service Fees for ranges of square feet of developed space. Furthermore, as building size increases, the range sizes increase to reflect the determination that differences in benefit become less related to size differential the larger the developed square feet and finally as it was determined that as developed square feet increases above 300,000 square feet no material additional benefit from Fire Service occurs, so the non-residential Fire Service Fee schedules include the same fee for all parcels with developed area in excess of 300,000 square feet. Finally, the first size range for the non residential fee schedules is the same as the fee for a residential dwelling unit, based upon the conclusion that all properties receive a base level of benefit from fire protection services provided by the City.

4. Billing Method & Verification

The City plans to include the Fire Service Fee on the electric utility bills of all properties in the City with the exception that vacant property will be excluded and property classified other than vacant but with no developed square feet will also not be billed. The City plans to enforce collection of the Fire Service Fee in the same manor that it enforces collection of its bills for utility service; based upon the same delinquency parameters employed for delinquent utility bills.

The City has identified the required property data for each utility account and/or service agreement and evaluated the utility database against the Property Appraiser's database that was used to calculate the proposed Fire Service Fee in conjunction with updating the utility billing system with the FY 2007 Fire Service Fees as presented in this report.

As part of this study, Burton & Associates was tasked to evaluate the implementation of the Fire Services Fee by reviewing sample bill calculations generated by the utility billing system. To do so, we reviewed approximately

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2,000 sample bill calculations to ensure 1) the property was being correctly classified into the appropriate Fire Service Fee rate class and 2) that the total fee being calculated by the billing system was correct based upon the square feet of building area identified in the utility billing system. For each of these 2,000 sample bills the fee being applied and the calculated amount of the Fire Service Fee were reviewed and determined to be correct based upon the information provided. As such, we believe it is reasonable to conclude that the utility billing system will appropriately apply and calculate the Fire Services Fees upon their effective date.

C. Recommendations

This section presents the results of the analysis for Fire Service Fees to recover all or a portion of the cost of the total fire protection service as specified in Section II.B.1. Cost of Service. The results are presented in terms of recommended Fire Service Fees by property use categories. Also, recommendations are presented regarding annual updates of the Fire Service Fees.

1. Recommended Fire Service Fees

The subsections below present the recommended Fire Service Fee rates by property class type developed during this Study.

a. Residential:

It was determined during this study that within the residential class, the difference in benefit received from Fire Service between differently sized dwelling units was not material, therefore, all residential dwelling units, whether they be single family, mobile home, condo or apartments, will receive the same Fire Service Fee.

Therefore, the recommended Fire Service Fee to recover approximately 44% of the cost of providing fire protection service to each residential dwelling unit within the City of Ocala was determined to be \$12.00 per month.

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b. Non-residential:

It was determined during this study that although the benefit to non-residential properties is related to the amount of developed space, the benefit is not proportionate to increased developed space on a square foot by square foot basis but rather the benefit increases over broader ranges of developed square feet. Therefore, the Fire Service Fee schedules for non-residential properties establish Fire Service Fees for ranges of square feet of developed space.

Furthermore, as building size increases, the range sizes increase to reflect the determination that differences in benefit become less related to size differential the larger the developed square feet. Ultimately, it was determined that as developed square feet increases above 300,000 square feet no material additional benefit from Fire Services occurs, so the non residential Fire Service Fee schedules include the same fee for all parcels with developed area in excess of 300,000 square feet.

It is important to note that the first size range for the non-residential fee schedules is the same as the fee for a residential dwelling unit, based upon the conclusion that all properties receive a base level of benefit from fire protection services provided by the City.

The fees for all the other ranges were calculated by dividing the residential fee per ERU by the average square feet per residential dwelling unit to determine a Fire Service Fee per square foot. This fee per square foot was then multiplied by the mid-point of each range included in the schedules of non-residential fees to determine the Fire Service Fee for that range of square feet.

Based upon these determinations of the methodology, the schedule of the monthly Fire Service Fees for non-residential properties presented on the following pages was developed to recover approximately 44% of the cost of providing fire protection service to non-residential properties within the City of Ocala.

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Monthly Recommended Fire Service Fees for Non-Residential Properties:

NON-RESIDENTIAL RATES BY SQUARE FOOTAGE BLOCK RANGE						
<u>Sq. Ft. Range</u>			<u>Proposed to be Effective in FY 2007 - 1/1/07</u>			
			<u>INST</u>	<u>GOV</u>	<u>C/I</u>	
0	-	2,000	\$ 12.00	\$ 12.00	\$ 12.00	
2,001	-	3,000	\$ 13.70	\$ 13.70	\$ 13.70	
3,001	-	4,000	\$ 19.17	\$ 19.17	\$ 19.17	
4,001	-	5,000	\$ 24.65	\$ 24.65	\$ 24.65	
5,001	-	6,000	\$ 30.13	\$ 30.13	\$ 30.13	
6,001	-	7,000	\$ 35.61	\$ 35.61	\$ 35.61	
7,001	-	8,000	\$ 41.09	\$ 41.09	\$ 41.09	
8,001	-	10,000	\$ 49.33	\$ 49.33	\$ 49.33	
10,001	-	12,000	\$ 60.27	\$ 60.27	\$ 60.27	
12,001	-	14,000	\$ 71.23	\$ 71.23	\$ 71.23	
14,001	-	16,000	\$ 82.18	\$ 82.18	\$ 82.18	
16,001	-	18,000	\$ 93.14	\$ 93.14	\$ 93.14	
18,001	-	20,000	\$ 104.10	\$ 104.10	\$ 104.10	
20,001	-	25,000	\$ 123.28	\$ 123.28	\$ 123.28	
25,001	-	30,000	\$ 150.67	\$ 150.67	\$ 150.67	
30,001	-	35,000	\$ 178.07	\$ 178.07	\$ 178.07	
35,001	-	40,000	\$ 205.46	\$ 205.46	\$ 205.46	
40,001	-	45,000	\$ 232.86	\$ 232.86	\$ 232.86	
45,001	-	50,000	\$ 260.25	\$ 260.25	\$ 260.25	
50,001	-	60,000	\$ 301.35	\$ 301.35	\$ 301.35	
60,001	-	70,000	\$ 356.14	\$ 356.14	\$ 356.14	
70,001	-	80,000	\$ 410.93	\$ 410.93	\$ 410.93	
80,001	-	90,000	\$ 465.72	\$ 465.72	\$ 465.72	
90,001	-	100,000	\$ 520.51	\$ 520.51	\$ 520.51	
100,001	-	120,000	\$ 602.70	\$ 602.70	\$ 602.70	
120,001	-	140,000	\$ 712.28	\$ 712.28	\$ 712.28	
140,001	-	160,000	\$ 821.86	\$ 821.86	\$ 821.86	
160,001	-	180,000	\$ 931.44	\$ 931.44	\$ 931.44	
180,001	-	200,000	\$ 1,041.03	\$ 1,041.03	\$ 1,041.03	
200,001	-	250,000	\$ 1,232.79	\$ 1,232.79	\$ 1,232.79	
250,001	-	300,000	\$ 1,506.75	\$ 1,506.75	\$ 1,506.75	
300,001	-	<	\$ 1,643.74	\$ 1,643.74	\$ 1,643.74	

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Section II: Fire Service Fees

2. Annual Update of Fire Service Fees

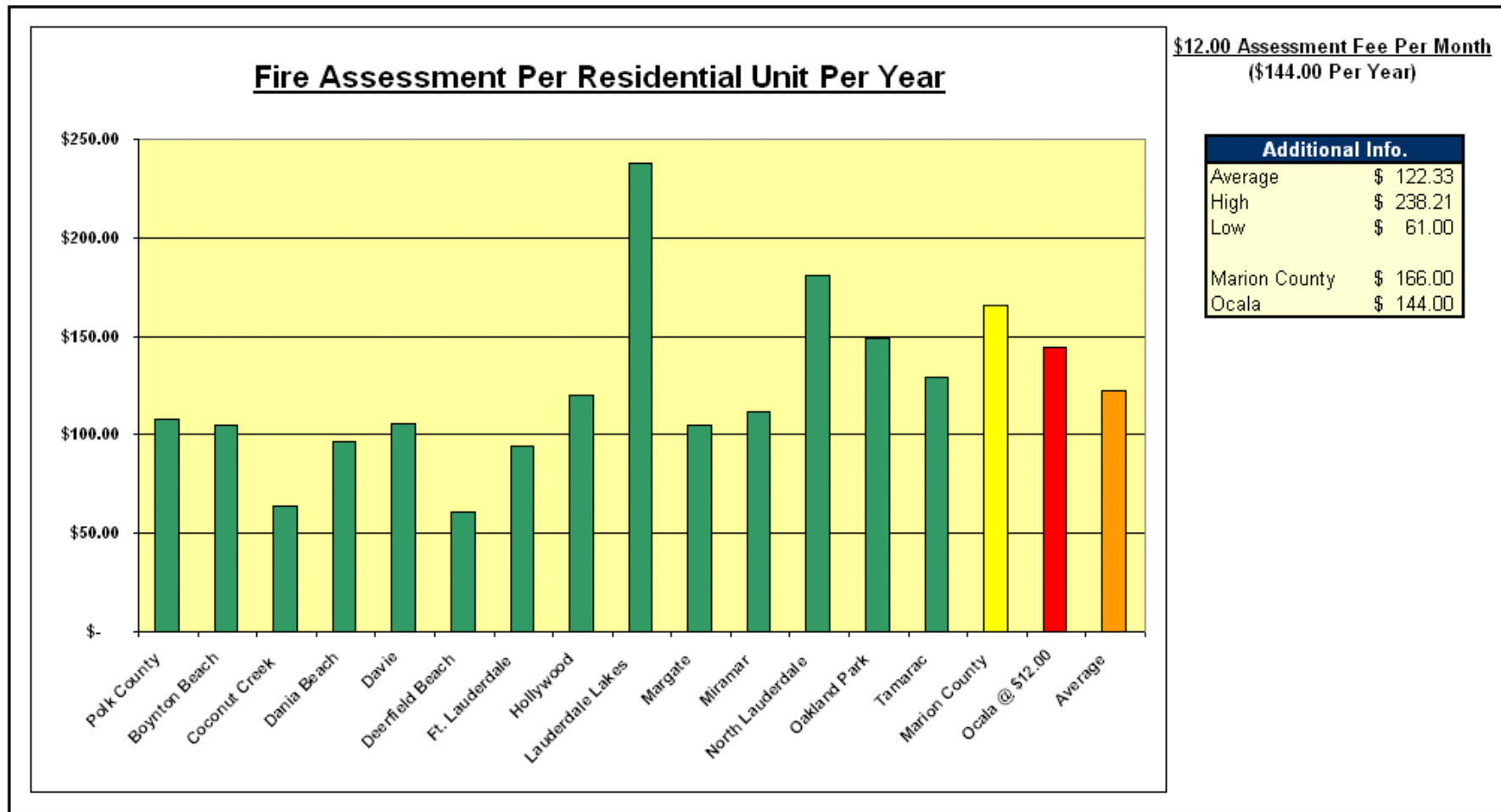
The revenue requirements used to derive the Fire Service Fees recommended herein should be evaluated on an annual basis and adjusted to ensure that increases in budgeted fire protection service costs are recovered in the adopted Fire Service Fees and/or by other funding sources. It is important to note that any annual increases in Fire Service Fees shall be based upon recommendation of the City Manager and will require the approval of the City Council.

D. Survey of Other Jurisdictions

The schedule on the following page provides a graphical representation of average fire protection service fees and/or special assessments for a typical single-family dwelling among other jurisdictions. It is important to note that this survey does not make adjustments for fire service fees or special assessment programs that only partially fund fire protection service costs. Thus, this survey is a comparative market analysis of fire service fees and/or special assessment rates and does not necessarily reflect the unit cost of providing fire protection services for a typical single-family dwelling unit located within the governmental boundaries of the entities surveyed.

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Survey of Fire Service Fees and/or Assessments



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III. Fire Service Impact Fees

This section presents the results of the development of Fire Service Impact Fees to recover capital costs of providing fire protection service to meet the demands of growth.

A. Background

The development of Fire Service Impact Fees requires that the capital costs for which new properties are assessed be based upon local data and are related to providing the fire service equipment and facilities required to meet the demands of growth. Fire Service Impact Fees cannot include the cost of curing existing deficiencies in level of service provided, nor can Fire Service Impact Fee revenues that are collected be used for such purpose.

In addition, case law for impact fees require that there be a “rational nexus” between the costs included in the impact fee and the benefit received by new development that is assessed the impact fee. This rational nexus standard requires that the capital costs included in the impact fee calculation be reasonably apportioned to property types based upon the benefit received by each property type.

Therefore, the recommended Fire Service Impact Fees presented in this study were developed so that the capital costs of providing fire protection services to new growth will be recovered through Fire Service Impact Fees from new properties in proportion to the benefit received by the capital costs included in the impact fee.

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Section III: Fire Service Impact Fees

B. Analysis

This section presents an overview of the analysis that was conducted in the study in order to develop Fire Service Impact Fees that are fair and equitable in addition to conforming to legal standards required for such fees.

1. Cost Basis

Determination of the proper capital costs to use as a basis for calculating the Fire Service Impact Fees is an important element of the process. The cost basis must be reasonably reflective of the capital costs required to provide fire service in the City of Ocala to new development at the same level of service currently being provided to the existing residents.

There are three approaches to determining the cost basis for a Fire Service Impact Fee. These approaches can be described as the replacement cost approach, the marginal cost approach and the weighted average replacement and marginal cost approach. These approaches are discussed below.

Replacement Cost Approach - One approach is to determine the replacement cost per equivalent dwelling unit (EDU) of the existing fire service equipment and facilities. This approach is appropriate when there is not a complete capital improvements program (CIP) that is reflective of all capital components (facilities and equipment) necessary to provide complete fire service to new development and/or there is some level of capacity in the existing fire service assets that can accommodate growth. The replacement/ reconstruction cost of the existing assets is reflective of the expected current cost to provide fire service assets to provide the same level of service to new development, without degrading the level of service provided to current residents.

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Marginal Cost Approach - The second approach is to determine the marginal costs per EDU of the fire service capital improvements program (CIP) of the City. This approach is appropriate when there is a complete CIP that is reflective of all capital components (facilities and equipment) necessary to provide complete fire service to new development and/or there is little or no capacity in the existing fire service assets to accommodate growth, and growth will be served primarily by the assets in the City's fire service CIP.

Weighted Average Replacement and Marginal Cost Approach - The third approach, which is the approach used in this study, is to use a combination of the replacement cost and marginal cost approaches. This approach is appropriate when there is some level of capacity in the existing fire service assets to accommodate growth, but the fire service CIP will also be necessary to serve growth. Under this combined approach a weighted average is effectively calculated of the replacement cost and marginal cost approaches.

2. Methodology

The proposed Fire Service Impact Fees were calculated as described in the following paragraphs.

The original cost and date placed in service were determined for all existing fire service facilities and equipment, and in some cases a replacement cost as of 2003 was provided by City staff. Costs associated with maintenance and/or renewal and replacement were specifically excluded from this analysis. These original costs and replacement costs, if available, were then escalated to reconstruction values in FY 2006 based upon applying an average annual escalation factor of 5% to the original costs for each year from the in-service date to FY 2006 and a 10% annual escalation factor to the replacement costs that were in 2003 dollars to reflect the higher increases in construction costs that have been incurred in recent years.

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The fire service CIP was then evaluated and the total project costs for projects, or portions thereof, associated only with providing new fire service capacity were totaled in FY 2006 dollars.

Then FY 2006 reconstruction costs and the FY 2006 CIP costs associated with new capacity were then totaled to determine the total asset cost basis for the calculation of the Fire Service Impact Fee.

Because a portion of the fire services assets are funded with debt, new development will have to pay the annual debt service on that debt in other payments to the City such as ad valorem taxes, gas taxes, etc., depending upon what revenue sources were pledged to support the issuance of the debt. Therefore, in order to avoid double payment in the Fire Service Impact Fee and other revenues, a credit was calculated, which was used to reduce the Fire Service Impact Fee. The credit was calculated as the net present value of the principal portion of the annual debt service projected to be paid by a development unit that is assumed to be constructed at the mid-point of the build-out of the assets included in the impact fee calculation through the term of the debt assumed for funding of a portion of the fire service assets. The resultant net capital cost, net of the debt service credit, represented the total cost eligible to be included in the impact fee calculation.

The total cost eligible to be included in the impact fee calculation, was then divided by the total projected equivalent dwelling units (EDUs) at the end of FY 2011, the last year for the CIP included in the impact fee calculations, to determine the fire service impact fee per EDU.

The capital costs included in the Fire Service Impact Fee calculation and the calculation of the Fire Service Impact Fee per EDU based upon those costs are presented on the following pages:

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Fire Service Impact Fee Calculation:

Fire Impact Fee Calculation									
		A		B		C	D	E	
		5 Year CIP <input checked="" type="radio"/> 10 Year CIP <input type="radio"/>				Replacement Costs of Existing Facilities	5-Yr CIP	Total	
1	<u>Fire Project Costs:</u>		% Bond Funded		% Grant Funded	\$ 11,810,829	\$ 5,324,000	\$ 17,134,829	
2	Less: Grant Funding					\$ -	\$ -	\$ -	
3	Bond Financed Projects		0.00%		0.00%	\$ -	\$ -	\$ -	
4	Projects Paid From Other Sources					\$ 11,810,829	\$ 5,324,000	\$ 17,134,829	
5									
6	<u>Financing Analysis:</u>								
7									
8	Projects Financed With Revenue Bonds:								
9	Sources of Funds:								
10	Estimated Par Amount		5.00%	Int for	20 Yrs	\$ -	\$ -	\$ -	
11	Estimated Int Earnings on Const Fund		1.50%	Int for	12 Mnths	\$ -	\$ -	\$ -	
12	Total Sources of Funds					\$ -	\$ -	\$ -	
13									
14	Uses of Funds:								
15	Project Costs Financed					\$ -	\$ -	\$ -	
16	Cost of Issuance		2.50% of Par			\$ -	\$ -	\$ -	
17	Underwriter's Discount		\$0.00 per \$1,000			\$ -	\$ -	\$ -	
18	Bond Insurance		\$0.00 times total Debt Service			\$ -	\$ -	\$ -	
19	Capitalized Interest		0 Years Interest			\$ -	\$ -	\$ -	
20	Debt Service Reserve		1 Years Debt Service			\$ -	\$ -	\$ -	
21	Accrued Interest on Commercial Paper					\$ -	\$ -	\$ -	
22	Total Uses of Funds					\$ -	\$ -	\$ -	
23	Annual Debt Service					\$ -	\$ -	\$ -	
24	Total Principal & Interest Payments over Term of Loan					\$ -	\$ -	\$ -	
25	Projects Paid From Other Sources					\$ 11,810,829	\$ 5,324,000	\$ 17,134,829	
26	Total Project Costs (Revenue Bond Funded)					\$ 11,810,829	\$ 5,324,000	\$ 17,134,829	
27	<u>Fire Impact Fee Calculation:</u>								
28	Transmission Capacity Multiplier (of Treatment Capacity)								
29	Capacity								
30									
31	Projected EDUs @ end of CIP					40,595	40,595	NA	
32									
33	Cost per EDU					\$ 291	\$ 131	\$ 422	
34									
35	Credit for NPV of Debt Service Included in Usage Rates					\$ (25)	\$ (11)	\$ (36)	
36	Fire Impact Fee per EDU					\$ 266	\$ 120	\$ 386	
37	Percentage of Full Cost Recovery							100.00%	
38	Proposed Fire Impact Fee per EDU					\$ 266	\$ 120	\$ 386	
39	Current Fire Impact Fee per EDU							\$ 0	
40	Change							\$ 386	
41	Percent Change							0.00%	

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Section III: Fire Service Impact Fees

Replacement Cost of Existing Facilities Calculations:

Replacement Costs of Existing Facilities							
Fire Facilities ⁽¹⁾							
Building	Year Built	Original Cost	Replace Cost	Replace Year	Current Year	Cost (Today's \$) ⁽²⁾	
Fire Administration	1980	\$ 55,000	\$ 300,000	2003	2006	\$ 399,300	
"White House"	1945	\$ 26,400			2006	\$ 517,787	
Station #1	1968	\$ 125,000	\$ 1,400,000	2003	2006	\$ 1,863,400	
Addition	1985	\$ 120,000			2006	\$ 334,316	
Station #2	2002	\$ 700,000			2006	\$ 850,854	
Station #3	1974	\$ 118,500	\$ 570,000	2003	2006	\$ 758,670	
Station #4	1990	\$ 527,687	\$ 800,000	2003	2006	\$ 1,064,800	
Station #5	1992	\$ 409,390			2006	\$ 810,564	
Refurbished	2004	\$ 400,000			2006	\$ 441,000	
Total		\$ 2,481,977	\$ 3,070,000			\$ 7,040,691	
Fire Apparatus							
Station	Year Built	Original Cost	Replace Cost	Replace Year	Current Year	Cost (Today's \$) ⁽²⁾	Lifespan
Station #1							
R1 Rescue	1998	\$ 60,547	\$ 90,000	2003	2006	\$ 119,790	10
E1/Engine ALS	2003	\$ 220,000	\$ 260,000	2003	2006	\$ 346,060	15
T1 Tower	1995	\$ 490,994	\$ 800,000	2003	2006	\$ 1,064,800	10
E12 Tanker	1992	\$ 120,000	\$ 130,000	2003	2006	\$ 173,030	15
H1 Hazmat	1994	\$ 21,344	\$ 35,000	2003	2006	\$ 46,585	10
H2 Hazmat	1975	\$ 16,994	\$ 220,000	2003	2006	\$ 292,820	10
Squad	2004	\$ 190,000	\$ -		2006	\$ 209,475	10
Station #2							
R2 Rescue	2003	\$ 80,000	\$ 90,000	2003	2006	\$ 119,790	10
E2 Engine	2001	\$ 210,000	\$ 260,000	2003	2006	\$ 346,060	15
Station #3							
R3 Rescue	1997	\$ 55,547	\$ 90,000	2003	2006	\$ 119,790	10
E3 Engine - ALS	2001	\$ 204,000	\$ 260,000	2003	2006	\$ 346,060	15
Station #4							
R4 Rescue	2003	\$ 80,000	\$ 90,000	2003	2006	\$ 119,790	10
E4 Engine	1995	\$ 203,868	\$ 260,000	2003	2006	\$ 346,060	15
RR2 Rescue	1997	\$ 59,000			2006	\$ 91,528	10
RE1 Engine	2001	\$ 204,000			2006	\$ 260,361	15
Station #5							
E5 Engine - ALS	2001	\$ 204,000	\$ 260,000	2003	2006	\$ 346,060	15
RR3 Rescue	1997	\$ 59,000			2006	\$ 91,528	10
RE2 Engine	1991	159000			2006	\$ 330,550	15
Total						\$ 4,770,138	
Total R & R Costs of Facilities and Apparatuses						\$ 11,810,829	
<p>(1) Fire Facilities costs are per "Unadopted 5 Year Plan" as provided by City staff on 1/6/2006.</p> <p>(2) Annual cost escalation factor of 10% assumed to escalate costs from 2003 to 2006 dollars.</p>							

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5 Year CIP in Impact Fee Calculation:

Capital Improvement Plan									
Project Description	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total 5 Year CIP	Expansion %	Total Costs in Impact Fee Calc.
Generator - Fire Station #1	\$ 42,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 42,000	0%	\$ -
Polaris Ranger 4x4	\$ 8,600	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,600	0%	\$ -
ALS Pumper	\$ 275,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 275,000	0%	\$ -
Utility Vehicle	\$ 19,540	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 19,540	0%	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
Communications Dispatch Software	\$ -	\$ 70,000	\$ -	\$ -	\$ -	\$ -	\$ 70,000	0%	\$ -
NFPA 2006 SCBA Compliance	\$ -	\$ 500,000	\$ -	\$ -	\$ -	\$ -	\$ 500,000	0%	\$ -
Mobile Data Terminals	\$ -	\$ -	\$ 70,000	\$ -	\$ -	\$ -	\$ 70,000	0%	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
<u>New Fire Station #6</u>	\$ 1,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000,000	100%	\$ 1,000,000
Engine	\$ -	\$ 350,000	\$ -	\$ -	\$ -	\$ -	\$ 350,000	100%	\$ 350,000
Staff Vehicle	\$ -	\$ 35,000	\$ -	\$ -	\$ -	\$ -	\$ 35,000	100%	\$ 35,000
Squad Vehicle	\$ -	\$ -	\$ 450,000	\$ -	\$ -	\$ -	\$ 450,000	100%	\$ 450,000
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
<u>New Fire Station #7</u>	\$ -	\$ -	\$ -	\$ 1,210,000	\$ -	\$ -	\$ 1,210,000	100%	\$ 1,210,000
Engine	\$ -	\$ -	\$ -	\$ 385,000	\$ -	\$ -	\$ 385,000	100%	\$ 385,000
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
<u>New Fire Station #8</u>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,464,000	\$ 1,464,000	100%	\$ 1,464,000
Engine	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 430,000	\$ 430,000	100%	\$ 430,000
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
Unspecified Future Projects	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	100%	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	\$ -
Total Projects	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ 1,595,000	\$ -	\$ 1,894,000	\$ 6,309,140		\$ 5,324,000
% of Budgeted CIP Projected to be Executed	100%	100%	100%	100%	100%	100%	100%		100%
Projected \$ to be Spent	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ 1,595,000	\$ -	\$ 1,894,000	\$ 6,309,140		\$ 5,324,000

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3. Apportionment of Costs

It has been well established that a reasonable method for apportioning fire service benefits, and thus impact fees, to properties is square feet of developed space. In this study it was determined that within the residential class, the difference in benefit received from Fire Service between differently sized dwelling units was not material, therefore, all residential dwelling units, whether they be single family, mobile home, condos or apartments, will receive the same Fire Service Impact Fee. It was also determined that the benefit received by non-residential properties 1) was related to the square feet of developed space on each parcel, and 2) was not materially different among the non-residential property classes. Therefore, although this study separates non-residential properties into several sub-classes for reporting and analysis purposes, the schedule of Fire Service Fees Impact Fees for each non-residential sub-class are the same.

It was also determined that although the benefit to non-residential properties is related to the amount of developed space, the benefit is not proportionate to increased developed space on a square foot by square foot basis but rather the benefit increases over broader ranges of developed square feet. Therefore, the Fire Service Impact Fee schedules for non-residential properties establish Fire Service Impact Fees for ranges of square feet of developed space. Furthermore, as building size increases, the range sizes increase to reflect the determination that differences in benefit become less related to size differential the larger the developed square feet and finally as it was determined that as developed square feet increases above 300,000 square feet, no material additional benefit from Fire Services occurs, so the non-residential Fire Service Impact Fee schedules include the same fee for all parcels with developed area in excess of 300,000 square feet. Finally, the first size range for the non-residential impact fee schedules is the same as the impact fee for a residential dwelling unit, based upon the conclusion that all properties receive a base level of benefit from fire protection service provided by the City.

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Section III: Fire Service Impact Fees

C. Recommendations

As is presented in the preceding schedules, the Fire Service Impact Fee for each equivalent residential dwelling unit for the residential class is \$386 per dwelling unit. This is the result of 1) adding together the replacement cost of the existing fire service assets and the fire service CIP, in FY 2006 dollars, to determine the total costs for inclusion in the impact fee calculation, 2) dividing that cost by the total estimated equivalent dwelling units (EDUs) in the last year of the CIP, to arrive at a cost per EDU of \$422, and 3) subtracting from that cost per EDU a credit for the net present value of debt service that the average new unit will pay after occupancy of \$36 to derive the net Fire Service Impact Fee per EDU of \$386. This method results in the best assessment of the cost per EDU to provide fire service assets to new growth units in FY 2006 dollars.

1. Proposed Residential Fire Service Impact Fee

The proposed residential Fire Service Fee per dwelling for all residential classes of properties is \$386 per dwelling unit.

2. Proposed Non-residential Fire Service Impact Fees

The Fire Service Impact Fees are proposed to be the same for all non-residential sub-classes (identified as Institutional, Government and Commercial/Industrial (C/I)). The schedules of non-residential fees were developed as follows:

The non-residential fee for the first range, 1 – 2,000 square feet, was considered to be the minimum benefit and was established to be the same as the residential impact fee, or \$386. The fees for the other ranges were calculated by dividing the residential impact fee per ERU by the average square feet per residential dwelling unit to determine the impact fee per square foot. This impact fee per square foot was then multiplied by the mid-point of each range included in the schedules of non-residential fees to determine the impact fee for that range of square feet. The rate for 300,000 square feet or greater was calculated as the fee per square foot times 300,000 square feet. Proposed non-residential Fire Service Impact Fees are presented on the following page:

Fire Service Fee Study

Final Report

Section III: Fire Service Impact Fees

Proposed Non-Residential Fire Service Impact Fees:

NON-RESIDENTIAL IMPACT FEE BY SQUARE FOOTAGE BLOCK RANGE						
<u>Sq. Ft. Range</u>		<u>Proposed to be Effective in FY 2007 - 1/1/07</u>				
		<u>INST</u>		<u>GOV</u>		<u>C/I</u>
1 -	2,000	\$ 386.00	\$	386.00	\$	386.00
2,001 -	3,000	\$ 440.79	\$	440.79	\$	440.79
3,001 -	4,000	\$ 617.11	\$	617.11	\$	617.11
4,001 -	5,000	\$ 793.43	\$	793.43	\$	793.43
5,001 -	6,000	\$ 969.75	\$	969.75	\$	969.75
6,001 -	7,000	\$ 1,146.07	\$	1,146.07	\$	1,146.07
7,001 -	8,000	\$ 1,322.38	\$	1,322.38	\$	1,322.38
8,001 -	10,000	\$ 1,586.86	\$	1,586.86	\$	1,586.86
10,001 -	12,000	\$ 1,939.49	\$	1,939.49	\$	1,939.49
12,001 -	14,000	\$ 2,292.13	\$	2,292.13	\$	2,292.13
14,001 -	16,000	\$ 2,644.77	\$	2,644.77	\$	2,644.77
16,001 -	18,000	\$ 2,997.40	\$	2,997.40	\$	2,997.40
18,001 -	20,000	\$ 3,350.04	\$	3,350.04	\$	3,350.04
20,001 -	25,000	\$ 3,967.15	\$	3,967.15	\$	3,967.15
25,001 -	30,000	\$ 4,848.74	\$	4,848.74	\$	4,848.74
30,001 -	35,000	\$ 5,730.33	\$	5,730.33	\$	5,730.33
35,001 -	40,000	\$ 6,611.91	\$	6,611.91	\$	6,611.91
40,001 -	45,000	\$ 7,493.50	\$	7,493.50	\$	7,493.50
45,001 -	50,000	\$ 8,375.09	\$	8,375.09	\$	8,375.09
50,001 -	60,000	\$ 9,697.47	\$	9,697.47	\$	9,697.47
60,001 -	70,000	\$ 11,460.65	\$	11,460.65	\$	11,460.65
70,001 -	80,000	\$ 13,223.83	\$	13,223.83	\$	13,223.83
80,001 -	90,000	\$ 14,987.00	\$	14,987.00	\$	14,987.00
90,001 -	100,000	\$ 16,750.18	\$	16,750.18	\$	16,750.18
100,001 -	120,000	\$ 19,394.95	\$	19,394.95	\$	19,394.95
120,001 -	140,000	\$ 22,921.30	\$	22,921.30	\$	22,921.30
140,001 -	160,000	\$ 26,447.66	\$	26,447.66	\$	26,447.66
160,001 -	180,000	\$ 29,974.01	\$	29,974.01	\$	29,974.01
180,001 -	200,000	\$ 33,500.36	\$	33,500.36	\$	33,500.36
200,001 -	250,000	\$ 39,671.48	\$	39,671.48	\$	39,671.48
250,001 -	300,000	\$ 48,487.37	\$	48,487.37	\$	48,487.37
300,001	<	\$ 52,895.31	\$	52,895.31	\$	52,895.31

Fire Service Fee Study
Final Report
Section IV: Legal Opinion

IV. Legal Opinion

The law firm of Lewis, Longman and Walker (LLW) provided legal input during the development of the Fire Service Fees presented in this report. Their legal opinion regarding the Fire Service Fees is presented in Appendix A.

In addition, the City retained LLW to also render a legal opinion on the Fire Service Impact Fees presented in this report. That legal opinion regarding the Fire Service Impact Fees is presented in Appendix B.

Fire Service Fee Study Final Report

Appendix A: Legal Opinion – Fire Service Fees

Reply To: West Palm Beach

June 21, 2006

The Honorable Randy Ewers
Mayor of the City of Ocala
P.O. Box 1270
Ocala, FL 34478

RE: Fire Services Fee Opinion
Our File No.: 893-006

Dear Mayor Ewers:

The Firm of Lewis, Longman & Walker, P.A. has consulted with Burton & Associates in the development of a proposed user fee for fire protection services (hereinafter the "Fire Services Fee") which, if adopted, will fund approximately forty-four percent (44%) of the City of Ocala's costs associated with maintaining and operating fire services for properties within the City. We have been asked to provide a legal opinion regarding whether the user fee recommended by Burton & Associates is a legally valid fee under Florida law.

In order to provide the requested opinion, we have undertaken the following preliminary tasks:

1. Consultation with Burton & Associates in the development of the user fee methodology and program;
2. Review of the proposed Fire Services Fee Study provided by Burton & Associates; and
3. Legal research and review of applicable Florida Statutes and case law relating to the imposition and collection of user fees and non-ad valorem or special assessments for municipal services.

Our opinion is based upon the following legal analysis:

Fire Service Fee Study

Final Report

Appendix A: Legal Opinion – Fire Service Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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A. The Fire Services Fee Is A Valid User Fee

Municipalities are generally authorized to impose and collect valid user fees established by ordinance as a result of their broad constitutional grant of home rule powers. City of New Smyrna Beach v. Board of Trustees of the Internal Improvement Trust Fund, 543 So. 2d 824, 829 (Fla. 5th DCA 1989). Pursuant to Article VIII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, a city may exercise any power not prohibited by general law or special act. Moreover, Section 166.201, Florida Statutes expressly authorizes municipalities to charge user fees in amounts necessary for the conduct of municipal governmental functions.

Florida courts have recognized that the determination of whether a charge is a “special assessment” or a “user fee” is not an easy one. The line of demarcation between the two is often blurred. Okeechobee Utility Authority v. Kamperounds of America, Inc., 882 So. 2d 445, 446 (Fla. 4th DCA 2004). User fees share common traits that distinguish them from assessments or taxes. As a general principle, user fees are charges based upon the proprietary right of the government body permitting the use of the instrumentality involved. State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1995). A “fee” is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit. Okeechobee Utility Authority v. Kamperounds of America, Inc., 882 So. 2d at 446-47. In comparison to a user fee, a “special assessment” is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area. Okeechobee Utility Authority v. Kamperounds of America, Inc., 882 So. 2d at 446-47. By contrast, a tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. State v. City of Port Orange, 650 So. 2d at 3; Klemm v. Davenport, 100 Fla. 627, 631, 129 So. 904, 907 (Fla. 1930).

In City of Gainesville v. State, 863 So. 2d 138, 145 (Fla. 2003), the Florida Supreme Court identified eight factors which are instructive in determining whether a specific charge is a “user fee” or a “special assessment”. They include:

- (1) the name given to the charge;
- (2) the relationship between the amount of the charge and the value of the service or benefit conferred on the property owner;
- (3) whether the charge is charged only to users of the service or is charged to all residents of a given area;

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Appendix A: Legal Opinion – Fire Service Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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- (4) whether the fee is voluntary – that is, whether a property owner may avoid the charge by refusing the service;
- (5) whether the charge is a monthly charge or a one-time charge
- (6) whether the fee is charged to recover the cost of improvements to a defined area or infrastructure, or the costs of the routine provision of services;
- (7) whether the charge is for a traditional utility; and
- (8) whether the charge is statutorily authorized as a fee.

Id. at 145. The Supreme Court has held that these factors must be considered and balanced in light of the specific circumstances of the charge being reviewed. No single factor is determinative. Id.

Upon applying these factors to the City of Ocala's proposed Fire Services Fee, five of the eight factors appear to support characterization of this charge as a "fee" as opposed to a tax or special assessment. The City refers to the charge as a "fee", which is relevant, but not dispositive. The proposed fee is only charged to users of the City's fire protection service. Vacant lands and lands in agricultural uses without structures requiring little or no fire protection will not be charged. Additionally, the charge will be billed to the property occupant, which could be the property owner or a tenant, on a monthly basis. These characteristics are indicative of a fee rather than an assessment. Okeechobee Utility Authority v. Kampgrounds of America, Inc., 882 So. 2d at 447.

As detailed in the Executive Summary for the City's Fire Services Fee Study, the amount of the proposed fee is related to the value or benefit of the fire protection service. Properties with more developed square footage will pay a higher fee based upon the greater benefit of reduced insurance rates for quality fire protection services. This also indicates that the charge is a fee. Id. Additionally, the fee is charged to cover the cost of the City's routine provision of fire protection services. This distinguishes the fee from an assessment which is typically charged to recover the costs of building or maintaining specific infrastructure. See State v. City of Port Orange, 650 So. 2d at 3 (City charge to cover the expansion and maintenance of municipal road network held to be an assessment).

Two of the eight factors: whether the charge is for a traditional utility, and whether the charge is statutorily authorized as a fee, which seem to support the fee, are somewhat problematic. While the term "traditional utility" is usually defined by examples such as the provision of electricity, natural gas, water, trash disposal and sewer services, an argument may be made that fire protection falls within this category of municipal services. Historically, fire departments were often

Fire Service Fee Study Final Report

Appendix A: Legal Opinion – Fire Service Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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private entities. To this day, volunteer fire departments still exist in smaller communities. Further, many cities and counties are served by independent fire control districts which are statutorily authorized to charge a variety of user and impact fees for the delivery of fire service. See Section 191.009, Florida Statutes. And, Fire service is distinguishable from police protection which is more properly categorized as a sovereign power for the administration of laws. Nevertheless, this factor is a closer call.

The consideration of whether the fee is statutorily authorized is similarly a close call. Research has revealed no specific grant of statutory authority to the City to impose a fee for fire protection services. The City must rely upon its general constitutional grant of home rule powers and Section 166.201, Florida Statutes (which is a broad, general grant of authority which doesn't mention fire service fees) to adopt the fee. This is distinguishable from the example of user fees for storm water management systems which benefit from a specific legislative grant of authority to impose user fees under Chapter 403, Florida Statutes. See, e.g. State v. City of Gainesville, 863 So. 2d at 145 (The City's creation of a storm water utility, as the statute authorized, is a strong factor militating in favor of finding storm water fees a user fee). However, a fire service fee is clearly not prohibited by general law or special act. Hence, it is arguable that such a fee is authorized pursuant to Chapter 166, Florida Statutes, the Municipal Home Rules Powers Act.

Only one of the eight factors identified by the Supreme Court seems to militate toward treating the charge as an assessment or a tax: whether the charge is voluntary – that is, whether a property owner may avoid the charge by refusing the service. The Fire Services Fee proposed by the City appears to be mandatory. The only way to avoid payment is for the property owner to decide to leave his land vacant or restrict his use to agriculture. There does not appear to be any way for a property owner to otherwise decline the City's fire protection services. While this factor weighs in favor of a tax or assessment, the voluntary or mandatory nature of the charge is not dispositive. Additionally, mandatory user fees for traditional utility services have been upheld by Florida Courts in the past. See Pinellas County v. State, 776 So. 2d 262, 268 (Fla. 2001)(user fees for reclaimed water service); see also, State v. City of Miami Springs, 245 So. 2d 80 (Fla. 1971)(mandatory sewer service fee unrelated to use); Stone v. Town of Mexico Beach, 348 So. 2d 40 (Fla. 1st DCA 1970)(mandatory flat fee for garbage service regardless of use).

B. Reasonableness of the Fee Calculation

As a valid user fee, the Fire Services Fee must be charged in an amount or at a rate which bears a reasonable relationship to the value of the goods or services provided or benefit conferred upon the property being charged. Okeechobee Utility Authority v. Kamperounds of America, Inc., 882 So. 2d at 447. State v. City of Gainesville, 863 So. 2d at 145. The courts have recognized that "the setting of utility rates is often a complicated process and mathematical exactitude cannot be

Fire Service Fee Study Final Report

Appendix A: Legal Opinion – Fire Service Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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required". Pinellas Apartment Ass'n v. City of St. Petersburg, 294 So. 2d 676, 678 (Fla. 2d DCA 1974). This is particularly true when the level of use of the utility service cannot feasibly be metered in the same way as electricity or potable water. State v. City of Gainesville, 778 So. 2d 519, 525 (Fla. 1st DCA 2001).

The City's Fire Services Fee Study provides a detailed fee schedule of the proposed Fire Services Fee as it relates to various parcels of land. The Study noted that the benefit of fire protection services is received from properties in the service area in two forms: maintenance of a standing watch and actual calls to service to respond to fires. The Study noted that the primary benefit to property owners, other than the direct benefit of protection of property, is the potential reduction in the cost of fire insurance rates. The availability of fire protection service and the quality of that service was found to greatly influence the ability of property owners to obtain insurance and the amount of the insurance premiums charged. The fact that all residential properties were treated the same was justified by the finding that differences in these benefits based upon the size of the dwelling was immaterial. The difference in benefits was also not material among different non-residential uses within certain size ranges. The study provides a non-residential rate based upon ranges of square footage of developed space on the parcel, and caps the fee at 300,000 square feet, determining that the difference in benefit for non-residential uses larger than 300,000 square feet was negligible.

This fee structure appears reasonably related to the benefit conferred upon various properties by the availability of fire services and is based upon experience in other locals in the establishment of a rate schedule for these types of services.

C. Fee Collection Procedures

The City's proposal to include the Fire Service Fee within the monthly utility bills also appears valid. The practice of combining utility services such as water, sewer and solid waste disposal within a single utility bill appears to be a common practice among utilities.

D. Conclusion

In conclusion, it is the Firm's opinion that the City's proposed Fire Services Fee is a valid user fee based upon an interpretation of Florida case law as outlined above. It is further the opinion of the Firm that the proposed rate charged for the Fire Services Fee bears a reasonable relation to the value of the services received and the benefit conferred upon the property owners. The proposed fee collection procedure also appears to be valid.

Fire Service Fee Study Final Report

Appendix A: Legal Opinion – Fire Service Fees

The Honorable Randy Ewers
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However, we have found no case law specifically validating such a scheme by a municipality or county. The Fire Services Fee can be challenged with a claim it is actually a special assessment or tax which must be adopted by the City through the procedures outlined in Chapter 197, Florida Statutes, or by referendum approval. While we believe the analysis above and case law support a favorable result for the City, if a legal challenge arises, we reiterate that no Florida court has directly addressed this issue of whether a fee may be charged to provide municipal fire services, and such a case would be one of first impression.

Sincerely, yours,

Terry E. Lewis
Andrew J. Baumann
For the Firm of Lewis, Longman & Walker, P.A.

TEL/AJB/bt
c. Members of the City Commission
Mr. Michael E. Burton – Burton & Associates

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees



LEWIS, LONGMAN & WALKER, P.A.
ATTORNEYS AT LAW

Reply To: West Palm Beach

July 18, 2006

The Honorable Randy Ewers
Mayor of the City of Ocala
P. O. Box 1270
Ocala, FL 34478

**VIA EMAIL,
FAX AND U.S. MAIL**

RE: Fire Service Impact Fee Opinion

Dear Mayor Ewers:

The Firm of Lewis, Longman & Walker, P.A. has consulted with the City of Ocala in the development of a proposed impact fee to pay for new infrastructure requirements that are necessary to meet the demands of growth (hereinafter the "Fire service impact fee"). We have been asked to provide a legal opinion regarding whether the impact fee under consideration by the City of Ocala is a legally valid fee under Florida law.

In order to provide the requested opinion, we have undertaken the following preliminary tasks:

1. Consultation with Burton and Associates in the development of the impact fee methodology and program;
2. Review of the proposed Fire Service Fee Study provided by Burton and Associates; and
3. Legal research and review of applicable Florida Statutes and case law relating to the imposition and collection of impact fees.

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Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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Our opinion is based upon the following legal analysis:

MUNICIPALITIES MAY IMPLEMENT FIRE SERVICE IMPACT FEES

Municipalities are generally authorized to impose and collect impact fees established by ordinance as a result of their broad constitutional grant of home rule powers. Section 163.31801(2), Florida Statutes (2006); see also, Contractors & Builders Assoc. of Pinellas County v. City of Dunedin, 329 So. 2d 314, 319 (1976). Pursuant to Article VIII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, a city may exercise any power not prohibited by general law or special act. Moreover, Section 163.31801, Florida Statutes, expressly authorizes local governments to charge impact fees in amounts necessary to fund infrastructure necessitated by new growth.

While no explicit statutory language authorizes municipalities to impose impact fees for fire service infrastructure, it is generally accepted that such impact fees are valid. This fact is acknowledged in Section 191.009(4), Florida Statutes, which states that fire control districts may impose such impact fees "[i]f the general purpose local government has not adopted an impact fee for fire services..." See also, St. Johns County v. Northeast Fla. Builders Assoc., 583 So. 2d 635, 638 (Fla. 1991) (upholding the concept that impact fees may be collected for schools and justifying that decision by noting that, "[n]ot all new residents will use the parks or call for fire protection, yet the county will have to provide additional facilities so as to be in a position to serve each dwelling unit").

Prior to the passage of the Florida Impact Fee Act, Section 163.31801, Florida Statutes, by the 2006 Florida Legislature, Florida courts developed the "double nexus" test to generally determine the validity of any given impact fee. As stated by the Supreme Court, in order to impose a valid impact fee:

[T]he local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditure of funds collected and the benefits accruing to the subdivision. In order to satisfy this latter requirement, the ordinance must specifically earmark the funds collected for use in acquiring capital facilities to benefit new residents.

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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St. Johns County, 583 So. 2d at 637.

This past legislative session, Senate Bill 1194 was passed, which created the Florida Impact Fee Act, Section 163.31801, Florida Statutes, effective as of June 14, 2006. Recognizing that "impact fees are an important source of revenue for local government to use in funding the infrastructure necessitated by new growth," the Act provides the minimum requirements to be met by the proposed fee in order for it be valid. Section 163.31801(1)-(2), Florida Statutes (2006). As stated in the statute:

An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- (a) Require that the calculation of the impact fee be based on the most recent and localized data.
- (b) Provide for accounting and reporting of impact fee collections and expenditures. If a local government entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.
- (c) Limit administrative charges for the collection of impact fees to actual costs.
- (d) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.

Section 163.31801(3), Florida Statutes (2006). Thus to be valid, the fire service impact fee proposed by the City of Ocala must comply with the statutory requirements set forth above and comply with the requirements of the Florida Supreme Court's double nexus test.

THE PROPOSED FIRE SERVICE IMPACT FEE IS VALID

As evidenced by the Fire Service Fee Study, City of Ocala, Florida, prepared by Burton and Associates ("the Study"), the proposed fire service impact fee is valid pursuant to the requirements set forth in Section 163.31801, Florida Statutes, and pursuant to the double nexus test.

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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A. The Proposed Fire Service Fee Complies with Applicable Florida Statutes

As detailed in the Study and as required by statute, the most recent and localized data regarding costs were obtained from the City in determining the cost basis for calculating the impact fee. Recognizing the importance of proper accounting and reporting with regard to the collection and expenditure of the proposed fire service impact fee, we have confirmed that the City will require, by ordinance, that the collected fees be properly accounted for and be expended only on allowable fire service infrastructure projects. Further, the City will restrict administrative charges for the collection of the fire service impact fee to actual costs. Finally, as required by statute, no less than 90 days notice will be provided prior to the effective date of the fire service impact fee ordinance.

B. The Impact Fee is Valid Pursuant to the Double Nexus Test

As discussed above, pursuant to the Supreme Court's double nexus test, a valid impact fee must demonstrate that the need for additional capital construction for which the impact fee is sought is reasonably connected to the growth in population that will accompany the new development that is subject to the fee. Further, to be valid, the impact fees collected must be properly expended so as to benefit those who have paid the fee.

Recognizing that the cost basis for calculating the fire service impact fee must reasonably reflect the capital costs generated by new development in order to continue to provide fire service in the City of Ocala at the same level of service currently being provided, Burton and Associates utilized the Weighted Average Replacement and Marginal Cost Approach to determine the proper cost basis for this impact fee.

As explained in the Executive Summary of the Study, "[t]his approach is appropriate when there is some level of capacity in the existing fire service assets to accommodate growth, but the fire service CIP [capital improvements program] will also be necessary to serve growth during the planning period." The Study utilized a 5-year CIP planning period for the impact fee calculation beginning FY 2006 through FY 2010. Pursuant to the cost basis calculated pursuant to this methodology, Burton and Associates apportioned a flat impact fee to all new residential dwelling units, after determining that the difference in benefit received from fire services between differently sized dwelling units was not material.

Thus, the proposed fire service impact fee for each equivalent residential dwelling unit will be \$386. This is the result of 1) adding together the replacement cost of the existing fire service assets of \$11,810,829 and the five year fire service CIP of \$5,324,000, in FY 2006 dollars, to determine the total costs for inclusion in the impact fee calculation of \$17,134,829, 2) dividing that

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

The Honorable Randy Ewers
Mayor of the City of Ocala
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cost by the total estimated equivalent residential units (ERUs) at the end of FY 2010, the last year of the five year CIP, to arrive at a cost per ERU of \$422, and 3) subtracting from that cost per ERU a credit for the net present value of debt service that the average new unit will pay after occupancy of \$36 to derive the net Fire Service Impact Fee per ERU of \$386. This method results in the best assessment of the cost per ERU to provide fire service assets to new growth units in FY 2006 dollars.

Non-residential properties were apportioned pursuant to ranges of square feet of developed space after it was determined that the benefit of fire service to non-residential properties increases over broader ranges of square feet. The Study also determined that

[A]s building size increases, the range of sizes increase to reflect the determination that differences in benefit become less related to size differential the larger the developed square feet and ... that as developed square feet increases over 300,000 square feet no material additional benefit from Fire Services occurs, so the non-residential fire service impact fee schedules include the same fee for all parcels with developed area in excess of 300,000 square feet.

Thus, based on the above, the Non-Residential Impact Fee by Square Footage Block Range table, attached hereto as Exhibit A, was compiled to determine the applicable fee for non-residential properties. The schedules of non-residential fees were developed as follows. The non-residential fee for the first range, 1 – 2,000 square feet, was considered to be the minimum benefit and was established to be the same as the residential impact fee, or \$386. The fees for the other ranges were calculated by dividing the residential impact fee per ERU by the average square feet per residential dwelling unit to determine the impact fee per square foot. This impact fee per square foot was then multiplied by the mid-point of each range included in the schedules of non-residential fees to determine the impact fee for that range of square feet. The rate for 300,000 square feet or greater was calculated as the fee per square foot times 300,000 square feet.

In determining the above-described need for and the allocation of the fire service impact fee, the Study utilizes the most current, available factual information and data from the City and related sources to determine probable additional fire service demands that will be necessary in the foreseeable future to serve new growth at the same level of service as presently provided. Factual information utilized includes the original cost of the City's existing fire service facilities and equipment, the City's current population escalated to FY 2010, and the City's five year Fire Service CIP from FY 2006 through FY 2010.

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

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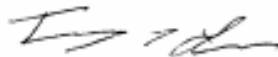
The Supreme Court of Florida has held that it is not necessary to demonstrate that every property subject to the impact fee be shown to have an impact on the capital improvements for which the fee is sought because, while "[n]ot all of the new residents will use the parks or call for fire protection, ...the county [or municipality] will have to provide additional facilities so as to be in a position to serve each dwelling unit." St. Johns County, 583 So. 2d at 638. Thus, the careful analysis in the Study aptly satisfies the first prong of the double nexus test by demonstrating the increased needs of particular fire service facilities in order for them to be ready to serve the population resulting from development growth.

Further, as discussed above, the Study thoroughly evaluated the benefits received by different categories of property and development to determine the most accurate allocation of the fire service impact fee. As to this prong of the test, the Supreme Court has said that, to be valid, it is enough that the new fire service improvements that are constructed with the fees collected be available to serve the units of development impacted by the fee. St. Johns County, 583 So. 2d at 639. Along these lines, the Study relates and allocates impact fee costs among various land use classifications based upon the finding that the benefit of the availability of fire service varies within ranges of the size of the developed square feet on the subject parcels. This analysis satisfies the second prong of the double rational nexus test by carefully allocating costs according to increased service requirements generated by a particular new land use.

CONCLUSION

Given the above evaluation of the fire service impact fee pursuant to relevant legal standards, it is our opinion that the Study and related information relied upon by the City of Ocala indicate that the fire service impact fee complies with the Florida Impact Fee Act and meets the double nexus requirements as set forth by the Supreme Court of Florida in St. Johns County v. Northeast Fla. Builders Assoc.

Sincerely, yours,



Terry E. Lewis
Tara W. Duh
For the Firm of Lewis, Longman & Walker, P.A.

TEL/TWD/bt

c. Donald Corley, Director, Finance and Administrative Services
Mr. Michael E. Burton – Burton & Associates

Fire Service Fee Study Final Report

Appendix B: Legal Opinion – Fire Service Impact Fees

FIRE SERVICE FEE STUDY IMPACT FEE EXECUTIVE SUMMARY

NON-RESIDENTIAL IMPACT FEE BY SQUARE FOOTAGE BLOCK RANGE				
Sq. Ft. Range		Proposed to be Effective in FY 2007 - 10/1/06		
		INST	GOV	C/I
1	- 2,000	\$ 386.00	\$ 386.00	\$ 386.00
2,001	- 3,000	\$ 440.79	\$ 440.79	\$ 440.79
3,001	- 4,000	\$ 617.11	\$ 617.11	\$ 617.11
4,001	- 5,000	\$ 793.43	\$ 793.43	\$ 793.43
5,001	- 6,000	\$ 969.75	\$ 969.75	\$ 969.75
6,001	- 7,000	\$ 1,146.07	\$ 1,146.07	\$ 1,146.07
7,001	- 8,000	\$ 1,322.38	\$ 1,322.38	\$ 1,322.38
8,001	- 10,000	\$ 1,586.86	\$ 1,586.86	\$ 1,586.86
10,001	- 12,000	\$ 1,939.49	\$ 1,939.49	\$ 1,939.49
12,001	- 14,000	\$ 2,292.13	\$ 2,292.13	\$ 2,292.13
14,001	- 16,000	\$ 2,644.77	\$ 2,644.77	\$ 2,644.77
16,001	- 18,000	\$ 2,997.40	\$ 2,997.40	\$ 2,997.40
18,001	- 20,000	\$ 3,350.04	\$ 3,350.04	\$ 3,350.04
20,001	- 25,000	\$ 3,967.15	\$ 3,967.15	\$ 3,967.15
25,001	- 30,000	\$ 4,848.74	\$ 4,848.74	\$ 4,848.74
30,001	- 35,000	\$ 5,730.33	\$ 5,730.33	\$ 5,730.33
35,001	- 40,000	\$ 6,611.91	\$ 6,611.91	\$ 6,611.91
40,001	- 45,000	\$ 7,493.50	\$ 7,493.50	\$ 7,493.50
45,001	- 50,000	\$ 8,375.09	\$ 8,375.09	\$ 8,375.09
50,001	- 60,000	\$ 9,697.47	\$ 9,697.47	\$ 9,697.47
60,001	- 70,000	\$ 11,460.65	\$ 11,460.65	\$ 11,460.65
70,001	- 80,000	\$ 13,223.83	\$ 13,223.83	\$ 13,223.83
80,001	- 90,000	\$ 14,987.00	\$ 14,987.00	\$ 14,987.00
90,001	- 100,000	\$ 16,750.18	\$ 16,750.18	\$ 16,750.18
100,001	- 120,000	\$ 19,394.95	\$ 19,394.95	\$ 19,394.95
120,001	- 140,000	\$ 22,921.30	\$ 22,921.30	\$ 22,921.30
140,001	- 160,000	\$ 26,447.66	\$ 26,447.66	\$ 26,447.66
160,001	- 180,000	\$ 29,974.01	\$ 29,974.01	\$ 29,974.01
180,001	- 200,000	\$ 33,500.36	\$ 33,500.36	\$ 33,500.36
200,001	- 250,000	\$ 39,671.48	\$ 39,671.48	\$ 39,671.48
250,001	- 300,000	\$ 48,487.37	\$ 48,487.37	\$ 48,487.37
300,001	<	\$ 52,895.31	\$ 52,895.31	\$ 52,895.31

City of Ocala

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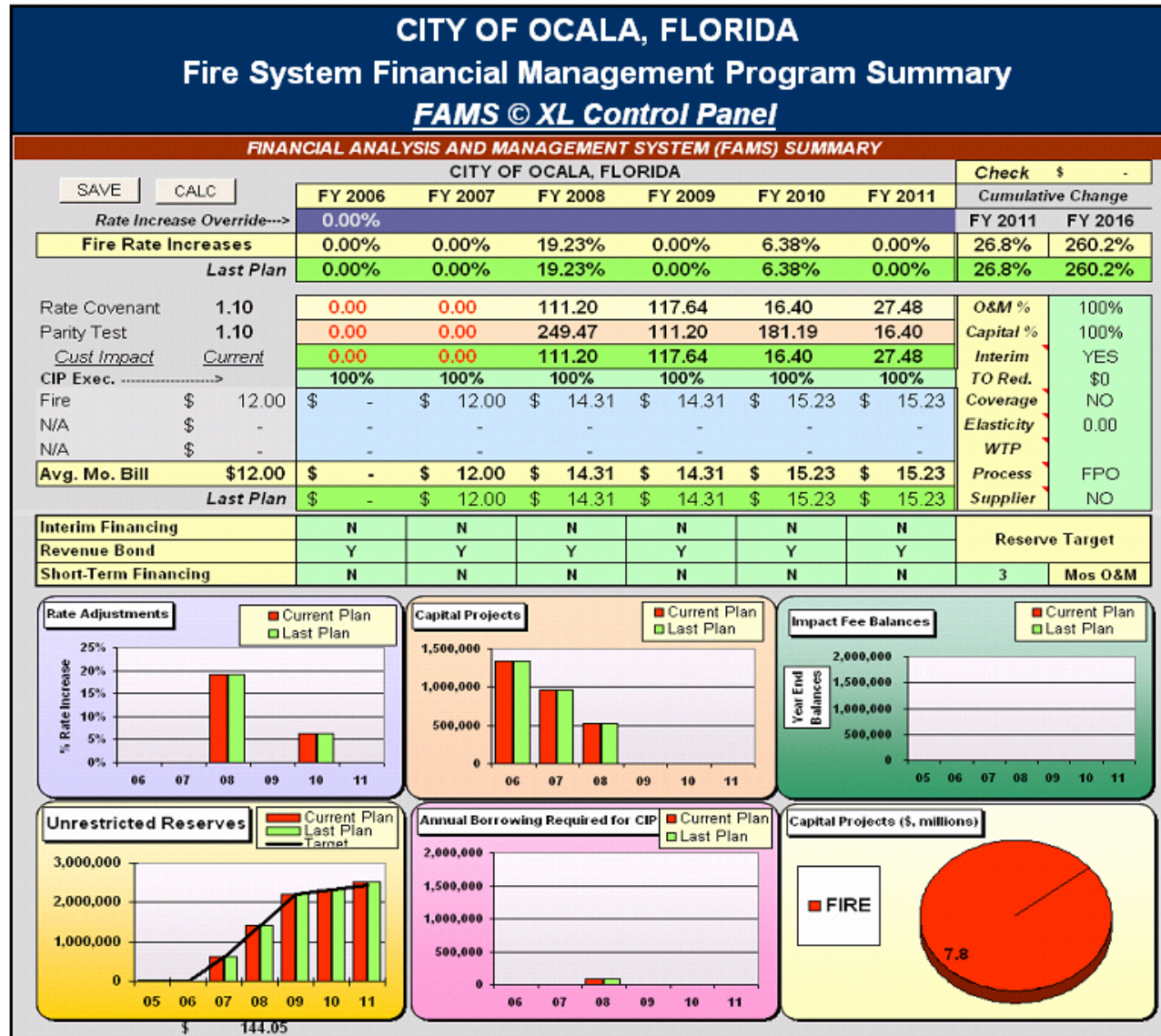
Burton and Associates

Appendix C: Financial Schedules

Supporting Schedules for Calculation of Fire Service Fees

Fire Service Fee Study Final Report

Appendix C: Schedule 1 – Summary Panel



Fire Service Fee Study Final Report

Appendix C: Schedule 2 – Assumptions

CITY OF OCALA, FLORIDA Fire System Financial Management Program Summary <i>Assumptions</i>						
Annual Growth & Cost Escalators:	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
ERU Growth ⁽¹⁾ :	N/A	0.49%	0.49%	0.49%	0.49%	0.48%
Operating Expenses:						
<u>Administration</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Fire Suppression</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Fire Safety Management</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Fire Training</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Fire Communications</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Fire Special Ops</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>Public Info/Education</u>						
Personnel Costs (Excl. Life & Health Insurance)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Life & Health Insurance	N/A	8.00%	8.00%	8.00%	8.00%	8.00%
Operating Costs (Excl. Utilities)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utilities	N/A	10.00%	10.00%	10.00%	10.00%	10.00%
<u>New Station Incremental O & M ⁽²⁾</u>						
New Station #6 Incremental Operating Costs (Personnel)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
New Station #6 Incremental Operating Costs (Operations)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Utility Billing Costs	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
Professional Services (Annual Financial Update)	N/A	5.00%	5.00%	5.00%	5.00%	5.00%
(1) Based upon an assumed annual growth of 196 ERU's per year.						
(2) New Station #6 Incremental O & M costs include additional costs resulting from proposed FY 2008 Squad Vehicle purchase.						

Debt Assumptions:	
Long-Term Financing	
Debt Service Coverage - Rate Covenant	1.10
Debt Service Coverage - Parity Test	1.25
Interest:	Cost of Borrowing:
FY 2006 5.00%	Cost of Issuance 2.50% of Par
FY 2007 5.00%	Underwriter's Discount \$0.00 per \$1,000
FY 2008 5.50%	Bond Insurance 0 times total Debt Service
FY 2009 5.50%	Capitalized Interest 0 Years Interest
FY 2010 - FY 2011 6.00%	Debt Service Reserve 1 Years Debt Service
	Term of Average Balance 12 Months
Bond Term 20 Years	Bundle Bonds for 1 Year
Short-Term Financing	
Interest:	Cost of Borrowing:
FY 2006 3.50%	Cost of Issuance 1.00% of Par
FY 2007 4.00%	Underwriter's Discount \$0.00 per \$1,000
FY 2008 4.50%	Bond Insurance 0 times total Debt Service
FY 2009 4.50%	Capitalized Interest 0 Years Interest
FY 2010 - FY 2011 4.50%	Debt Service Reserve 0 Years Debt Service
	Term of Average Balance 12 Months
Term 10 Years	Bundle Bonds for 1 Year
Interim Financing	
Interest:	Cost of Borrowing:
FY 2006 3.00%	Cost of Issuance 0.00% of Par
FY 2007 3.50%	Underwriter's Discount \$0.00 per \$1,000
FY 2008 4.00%	Bond Insurance 0 times total Debt Service
FY 2009 4.50%	Capitalized Interest 0 Years Interest
FY 2010 - FY 2011 5.00%	Debt Service Reserve 0 Years Debt Service
	Term of Average Balance 12 Months
Term 20 Years	
Accrue Interest on Interim Financing?	Yes

Other Assumptions:	
Interest Earnings Rate On Fund Balances	
FY 2006	1.50%
FY 2007	1.50%
FY 2008 - FY 2009	2.00%
FY 2010 - FY 2011	2.50%
Working Capital Reserve Target	
3	Months of O&M
% of Budget Required For Desired Rate Increase	
O&M	
2006 - 2011	100.00%
Capital	
2006 - 2011	100.00%

Fire Service Fee Study Final Report

Appendix C: Schedule 3 – Capital Improvement Plan

CITY OF OCALA, FLORIDA									
Fire System Financial Management Program Summary									
<u>Capital Improvement Plan</u>									
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011			
<u>Project Description</u>									
Generator - Fire Station #1	\$ 42,000	\$ -	\$ -	\$ -	\$ -	\$ -			
Polaris Ranger 4x4	\$ 8,600	\$ -	\$ -	\$ -	\$ -	\$ -			
ALS Pumper	\$ 275,000	\$ -	\$ -	\$ -	\$ -	\$ -			
Utility Vehicle	\$ 19,540	\$ -	\$ -	\$ -	\$ -	\$ -			
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Communications Dispatch Software	\$ -	\$ 70,000	\$ -	\$ -	\$ -	\$ -			
NFPA 2006 SCBA Compliance	\$ -	\$ 500,000	\$ -	\$ -	\$ -	\$ -			
Mobile Data Terminals	\$ -	\$ -	\$ 70,000	\$ -	\$ -	\$ -			
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
<u>New Fire Station #6</u>	\$ 1,000,000	\$ -	\$ -	\$ -	\$ -	\$ -			
Engine	\$ -	\$ 350,000	\$ -	\$ -	\$ -	\$ -			
Staff Vehicle	\$ -	\$ 35,000	\$ -	\$ -	\$ -	\$ -			
Squad Vehicle	\$ -	\$ -	\$ 450,000	\$ -	\$ -	\$ -			
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Unspecified Future Projects	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Total Projects	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ -	\$ -	\$ -			
% of Budgeted CIP Projected to be Executed	100%	100%	100%	100%	100%	100%			
Projected \$ to be Spent	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ -	\$ -	\$ -			

Fire Service Fee Study Final Report

Appendix C: Schedule 4 – Cash Inflows

CITY OF OCALA, FLORIDA Fire System Financial Management Program Summary Cash Inflows

Projections of Revenue & Other Sources of Funds

<u>Projection Assumptions</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Fire Usage Revenue ⁽¹⁾	N/A	0.49%	0.49%	0.49%	0.49%	0.48%
Annual Fire Usage Rate Increase Assumed ⁽²⁾	0.00%	0.00%	19.23%	0.00%	6.38%	0.00%
<u>Rate Revenue Subject to Growth & Rate Increase</u>						
Fire Usage Rate Revenue	\$ 10,789,202	\$ 5,734,997	\$ 6,871,686	\$ 6,905,292	\$ 7,381,409	\$ 7,417,158
Total Rate Revenue Subject to Growth & Rate Increase	\$ 10,789,202	\$ 5,734,997	\$ 6,871,686	\$ 6,905,292	\$ 7,381,409	\$ 7,417,158
<u>Non-Operating Revenue/Other Sources of Funds</u>						
General Fund Transfer In (In Addition to EMS Costs) ⁽³⁾	\$ -	\$ 7,457,500	\$ 7,910,000	\$ 8,600,000	\$ 8,160,000	\$ 9,000,000
Interest	\$ 219	\$ 8,161	\$ 24,911	\$ 36,326	\$ 56,900	\$ 60,545
Fire Impact Fees ⁽⁴⁾	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1/8th Mill Fund Transfer In	\$ 1,050,600	\$ 1,400,000	\$ -	\$ -	\$ -	\$ -
Fleet Recovery Transfer In	\$ 294,540	\$ -	\$ -	\$ -	\$ -	\$ -
Total Non-Operating Revenue/Other Sources of Funds	\$ 1,345,359	\$ 8,865,661	\$ 7,934,911	\$ 8,636,326	\$ 8,216,900	\$ 9,060,545
Total Revenue	\$ 12,134,561	\$ 14,600,659	\$ 14,806,597	\$ 15,541,617	\$ 15,598,309	\$ 16,477,702

(1) Fire Usage Revenue will not begin until FY 2007, therefore there is no rate increase until FY 2008

(2) Fire Usage Rate Revenue in FY 2006 is a subsidy from the General Fund less the Fire Rescue (EMS) portion. Collection of Fire Usage Revenue will actually begin FY 2007.

(3) General Fund Subsidy.

(4) Fire Impact Fee to begin being collected FY 2007.

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

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CITY OF OCALA, FLORIDA									
Fire System Financial Management Program Summary									
Cash Outflows ⁽¹⁾									
Projections of Debt Service, O&M Expenses & Capital Outlay									
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011			
Administration									
Personnel Costs ⁽²⁾									
522 11000 Accrued Payroll Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11100 Salaries - Regular	\$ 274,477	\$ 288,201	\$ 302,611	\$ 317,742	\$ 333,629	\$ 350,311			
522 11110 Station Chang Per Shift	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11200 Salaries - Overtime	\$ 1,590	\$ 1,670	\$ 1,753	\$ 1,841	\$ 1,933	\$ 2,029			
522 11300 Salaries - Part-Time	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11400 Salaries - Longevity	\$ 6,052	\$ 6,354	\$ 6,672	\$ 7,005	\$ 7,356	\$ 7,723			
522 11500 Salaries - Spec Pay	\$ 1,000	\$ 1,050	\$ 1,103	\$ 1,158	\$ 1,216	\$ 1,276			
522 11600 Employee Awards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11700 Salaries - Fire Allow.	\$ 2,100	\$ 2,205	\$ 2,315	\$ 2,431	\$ 2,553	\$ 2,680			
522 11800 Holiday Pay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11900 Fire Garcia Half Time	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 12100 FICA Taxes	\$ 21,819	\$ 22,910	\$ 24,056	\$ 25,259	\$ 26,521	\$ 27,848			
522 12200 Retirement Contribution	\$ 49,257	\$ 51,720	\$ 54,306	\$ 57,022	\$ 59,873	\$ 62,866			
522 12300 Insurance - Life & Health	\$ 25,000	\$ 27,000	\$ 29,160	\$ 31,493	\$ 34,012	\$ 36,733			
522 12400 Workers' Compensation	\$ 6,094	\$ 6,399	\$ 6,719	\$ 7,055	\$ 7,407	\$ 7,778			
522 12600 Disability Inc. Replace	\$ 1,149	\$ 1,206	\$ 1,267	\$ 1,330	\$ 1,397	\$ 1,466			
522 12700 Executive Life Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 13200 Uniform Allowance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 13400 Fire Stipend	\$ 1,000	\$ 1,050	\$ 1,103	\$ 1,158	\$ 1,216	\$ 1,276			
522 13500 Executive Physical Allow	\$ 1,000	\$ 1,050	\$ 1,103	\$ 1,158	\$ 1,216	\$ 1,276			
Total Personnel Costs	\$ 390,539	\$ 410,816	\$ 432,166	\$ 454,649	\$ 478,327	\$ 503,263			
Operating Expenses									
522 30500 Advertising - Promotions	\$ 500	\$ 525	\$ 551	\$ 579	\$ 608	\$ 638			
522 30600 Advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 31800 Books, Publications, & Maps	\$ 1,500	\$ 1,575	\$ 1,654	\$ 1,736	\$ 1,823	\$ 1,914			
522 36000 Allocation - I.T.	\$ 72,167	\$ 75,775	\$ 79,564	\$ 83,542	\$ 87,719	\$ 92,105			
522 37800 Dues & Subscription	\$ 925	\$ 971	\$ 1,020	\$ 1,071	\$ 1,124	\$ 1,181			
522 39200 Allocation - Clinic	\$ 20,517	\$ 21,543	\$ 22,620	\$ 23,751	\$ 24,939	\$ 26,185			
522 39400 Allocation - Property Ins.	\$ 14,306	\$ 15,021	\$ 15,772	\$ 16,561	\$ 17,389	\$ 18,258			
522 39500 Allocation - Special Ins	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 39600 Allocation - Genl/Auto Ins.	\$ 69,747	\$ 73,234	\$ 76,896	\$ 80,741	\$ 84,778	\$ 89,017			
522 39900 Allocation - Risk Mgmt	\$ 34,485	\$ 36,209	\$ 38,020	\$ 39,921	\$ 41,917	\$ 44,013			
522 40700 Allocation - Info. & Publ.	\$ 926	\$ 972	\$ 1,021	\$ 1,072	\$ 1,126	\$ 1,182			
522 40800 Misc Unclassified	\$ 500	\$ 525	\$ 551	\$ 579	\$ 608	\$ 638			
522 41700 Mandated Disposal Items	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 41800 Payments - Other Government	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 42000 Printing & Binding	\$ 3,248	\$ 3,410	\$ 3,581	\$ 3,760	\$ 3,948	\$ 4,145			
522 42200 Copy Contract	\$ 2,689	\$ 2,823	\$ 2,965	\$ 3,113	\$ 3,268	\$ 3,432			
522 43900 Prof Svs. - Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 46800 Rental - Equip. & Land	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 47000 Allocation - Courier Service	\$ 4,024	\$ 4,225	\$ 4,436	\$ 4,658	\$ 4,891	\$ 5,136			
522 47200 Allocation - Facilities Maint.	\$ 127,994	\$ 134,394	\$ 141,113	\$ 148,169	\$ 155,578	\$ 163,356			
522 47300 Allocation - Cent. Svc.	\$ 7,000	\$ 7,350	\$ 7,718	\$ 8,103	\$ 8,509	\$ 8,934			
522 47400 Allocation - 800 MHz System	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 48000 Repair & Maintenance - Auto/Equip	\$ 1,420	\$ 1,491	\$ 1,566	\$ 1,644	\$ 1,726	\$ 1,812			
522 48100 Repair & Maintenance - Fuel	\$ 3,300	\$ 3,465	\$ 3,638	\$ 3,820	\$ 4,011	\$ 4,212			
522 48200 Repair & Maintenance - Bld/Grnds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 48600 Repair & Maintenance - Other Equip	\$ 1,200	\$ 1,260	\$ 1,323	\$ 1,389	\$ 1,459	\$ 1,532			
522 49000 Repair & Maintenance - Radio Eqp	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 52000 Supplies - Chem & Amm	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 52100 Supplies - Cleaning	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 52800 Supplies - Office	\$ 1,100	\$ 1,155	\$ 1,213	\$ 1,273	\$ 1,337	\$ 1,404			
522 53100 Supplies - Operating	\$ 2,750	\$ 2,888	\$ 3,032	\$ 3,183	\$ 3,343	\$ 3,510			
522 53200 Supplies - Plaques & Cft	\$ 300	\$ 315	\$ 331	\$ 347	\$ 365	\$ 383			
522 53400 Supplies - Postage	\$ 440	\$ 462	\$ 485	\$ 509	\$ 535	\$ 562			
522 53600 Supplies - Small Tool & Equip	\$ 1,400	\$ 1,470	\$ 1,544	\$ 1,621	\$ 1,702	\$ 1,787			
522 53900 Supplies - Sm. PC Eqp./Software	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 54000 Supplies - Uniforms	\$ 2,200	\$ 2,310	\$ 2,426	\$ 2,547	\$ 2,674	\$ 2,808			
522 55300 Travel & Training	\$ 7,640	\$ 8,022	\$ 8,423	\$ 8,844	\$ 9,286	\$ 9,751			
522 55400 Training - Local	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 55700 Telecomm. Dept. Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 55800 Telephone (Incl. Fax)	\$ 300	\$ 315	\$ 331	\$ 347	\$ 365	\$ 383			
522 57400 O & M Charge - Autos/Equip	\$ 3,436	\$ 3,608	\$ 3,788	\$ 3,978	\$ 4,176	\$ 4,385			
522 57500 Replace Chg - Autos/Equip	\$ 5,015	\$ 5,266	\$ 5,529	\$ 5,805	\$ 6,096	\$ 6,401			
522 57600 Utilities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 61100 Autos & Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 62200 Buildings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 66600 Oth Mach & Equip	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Total Fixed Operating Expenses	\$ 391,029	\$ 410,580	\$ 431,109	\$ 452,665	\$ 475,298	\$ 499,063			
TOTAL ADMINISTRATION DEPARTMENT EXPENSES	\$ 781,568	\$ 821,396	\$ 863,276	\$ 907,314	\$ 953,625	\$ 1,002,326			
Fire Suppression									
Personnel Costs ⁽²⁾									
522 11000 Accrued Payroll Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11100 Salaries - Regular	\$ 4,756,831	\$ 4,994,672	\$ 5,244,406	\$ 5,506,626	\$ 5,781,957	\$ 6,071,055			
522 11110 Station Chang Per Shift	\$ 212	\$ 223	\$ 234	\$ 245	\$ 258	\$ 271			
522 11200 Salaries - Overtime	\$ 200,000	\$ 210,000	\$ 220,500	\$ 231,525	\$ 243,101	\$ 255,256			
522 11300 Salaries - Part-Time	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11400 Salaries - Longevity	\$ 90,637	\$ 95,169	\$ 99,928	\$ 104,924	\$ 110,170	\$ 115,679			
522 11500 Salaries - Spec Pay	\$ 35,000	\$ 36,750	\$ 38,588	\$ 40,517	\$ 42,543	\$ 44,670			
522 11600 Employee Awards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11700 Salaries - Fire Allow.	\$ 135,361	\$ 142,129	\$ 149,236	\$ 156,697	\$ 164,532	\$ 172,759			
522 11800 Holiday Pay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
522 11900 Fire Garcia Half Time	\$ 19,080	\$ 20,034	\$ 21,036	\$ 22,087	\$ 23,192	\$ 24,351			
522 12100 FICA Taxes	\$ 400,640	\$ 420,672	\$ 441,705	\$ 463,791	\$ 486,980	\$ 511,329			
522 12200 Retirement Contribution	\$ 904,451	\$ 949,673	\$ 997,157	\$ 1,047,015	\$ 1,099,366	\$ 1,154,334			
522 12300 Insurance - Life & Health	\$ 525,000	\$ 567,000	\$ 612,360	\$ 661,349	\$ 714,257	\$ 771,397			

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

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CITY OF OCALA, FLORIDA							
Fire System Financial Management Program Summary							
<u>Cash Outflows ⁽¹⁾</u>							
Projections of Debt Service, O&M Expenses & Capital Outlay							
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
522 12400 Workers' Compensation	\$ 290,538	\$ 305,065	\$ 320,318	\$ 336,334	\$ 353,151	\$ 370,808	
522 12600 Disability Inc. Replace	\$ 20,618	\$ 21,649	\$ 22,731	\$ 23,868	\$ 25,061	\$ 26,314	
522 12700 Executive Life Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 13200 Uniform Allowance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 13400 Fire Stipend	\$ 53,000	\$ 55,650	\$ 58,433	\$ 61,354	\$ 64,422	\$ 67,643	
522 13500 Executive Physical Allow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Personnel Costs	\$ 7,431,368	\$ 7,819,686	\$ 8,226,630	\$ 8,656,333	\$ 9,108,990	\$ 9,585,867	
Operating Expenses							
522 30500 Advertising - Promotions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 30600 Advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 31800 Books, Publications, & Maps	\$ 1,200	\$ 1,260	\$ 1,323	\$ 1,389	\$ 1,459	\$ 1,532	
522 36000 Allocation - I.T.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 37800 Dues & Subscription	\$ 1,100	\$ 1,155	\$ 1,213	\$ 1,273	\$ 1,337	\$ 1,404	
522 39200 Allocation - Clinic	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 39400 Allocation - Property Ins.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 39500 Allocation - Special Ins	\$ 36,000	\$ 37,800	\$ 39,690	\$ 41,675	\$ 43,758	\$ 45,946	
522 39600 Allocation - Gen/Auto Ins.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 39900 Allocation - Risk Mgmt	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 40700 Allocation - Info. & Publ.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 40800 Misc Unclassified	\$ 500	\$ 525	\$ 551	\$ 579	\$ 608	\$ 638	
522 41700 Mandated Disposal Items	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 41800 Payments - Other Government	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 42000 Printing & Binding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 42200 Copy Contract	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 43900 Prof Svs. - Other	\$ 29,150	\$ 30,808	\$ 32,138	\$ 33,745	\$ 35,432	\$ 37,204	
522 46800 Rental - Equip. & Land	\$ 3,100	\$ 3,255	\$ 3,418	\$ 3,589	\$ 3,768	\$ 3,956	
522 47000 Allocation - Courier Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 47200 Allocation - Facilities Maint.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 47300 Allocation - Cent. Svc.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 47400 Allocation - 800 MHZ System	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 48000 Repair & Maintenance - Auto/Equip	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 48100 Repair & Maintenance - Fuel	\$ 24,200	\$ 25,410	\$ 26,681	\$ 28,015	\$ 29,415	\$ 30,886	
522 48200 Repair & Maintenance - Bld/Grnds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 48600 Repair & Maintenance - Other Equip	\$ 11,400	\$ 11,970	\$ 12,569	\$ 13,197	\$ 13,857	\$ 14,550	
522 49000 Repair & Maintenance - Radio Eqp	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 52000 Supplies - Chem & Amm	\$ 1,900	\$ 1,995	\$ 2,095	\$ 2,199	\$ 2,309	\$ 2,425	
522 52100 Supplies - Cleaning	\$ 10,059	\$ 10,562	\$ 11,090	\$ 11,645	\$ 12,227	\$ 12,838	
522 52800 Supplies - Office	\$ 660	\$ 693	\$ 728	\$ 764	\$ 802	\$ 842	
522 53100 Supplies - Operating	\$ 6,137	\$ 6,444	\$ 6,766	\$ 7,104	\$ 7,460	\$ 7,833	
522 53200 Supplies - Plaques & Cft	\$ 400	\$ 420	\$ 441	\$ 463	\$ 486	\$ 511	
522 53400 Supplies - Postage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 53600 Supplies - Small Tool & Equip	\$ 50,000	\$ 52,500	\$ 55,125	\$ 57,881	\$ 60,775	\$ 63,814	
522 53900 Supplies - Sm. PC Eqp./Software	\$ 750	\$ 788	\$ 827	\$ 868	\$ 912	\$ 957	
522 54000 Supplies - Uniforms	\$ 2,000	\$ 2,100	\$ 2,205	\$ 2,315	\$ 2,431	\$ 2,553	
522 55300 Travel & Training	\$ 928	\$ 974	\$ 1,023	\$ 1,074	\$ 1,128	\$ 1,184	
522 55400 Training - Local	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 55700 Telecomm. Dept. Fees	\$ 2,200	\$ 2,310	\$ 2,426	\$ 2,547	\$ 2,674	\$ 2,808	
522 55800 Telephone (Incl. Fax)	\$ 13,300	\$ 13,965	\$ 14,663	\$ 15,396	\$ 16,166	\$ 16,975	
522 57400 O & M Charge - Autos/Equip	\$ 192,379	\$ 201,998	\$ 212,098	\$ 222,703	\$ 233,838	\$ 245,530	
522 57500 Replace Chg - Autos/Equip	\$ 241,325	\$ 253,391	\$ 266,061	\$ 279,364	\$ 293,332	\$ 307,999	
522 57600 Utilities	\$ 82,338	\$ 90,572	\$ 99,629	\$ 109,592	\$ 120,551	\$ 132,606	
522 61100 Autos & Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 62200 Buildings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 66600 Oth Mach & Equip	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Fixed Operating Expenses	\$ 711,026	\$ 750,694	\$ 792,758	\$ 837,377	\$ 884,725	\$ 934,989	
TOTAL FIRE SUPPRESSION DEPARTMENT EXPENSES	\$ 8,142,394	\$ 8,569,380	\$ 9,019,388	\$ 9,493,709	\$ 9,993,715	\$ 10,520,856	
Fire Safety Management							
Personnel Costs ⁽²⁾							
522 11000 Accrued Payroll Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 11100 Salaries - Regular	\$ 299,828	\$ 314,820	\$ 330,561	\$ 347,089	\$ 364,443	\$ 382,665	
522 11110 Station Chang Per Shift	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 11200 Salaries - Overtime	\$ 11,660	\$ 12,243	\$ 12,855	\$ 13,498	\$ 14,173	\$ 14,881	
522 11300 Salaries - Part-Time	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 11400 Salaries - Longevity	\$ 7,871	\$ 8,264	\$ 8,677	\$ 9,111	\$ 9,567	\$ 10,045	
522 11500 Salaries - Spec Pay	\$ 1,600	\$ 1,680	\$ 1,764	\$ 1,852	\$ 1,945	\$ 2,042	
522 11600 Employee Awards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 11700 Salaries - Fire Allow.	\$ 11,720	\$ 12,306	\$ 12,921	\$ 13,567	\$ 14,246	\$ 14,958	
522 11800 Holiday Pay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 11900 Fire Garcia Half Time	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 12100 FICA Taxes	\$ 25,450	\$ 26,722	\$ 28,059	\$ 29,461	\$ 30,935	\$ 32,481	
522 12200 Retirement Contribution	\$ 57,454	\$ 60,326	\$ 63,343	\$ 66,510	\$ 69,835	\$ 73,327	
522 12300 Insurance - Life & Health	\$ 20,000	\$ 21,600	\$ 23,328	\$ 25,194	\$ 27,210	\$ 29,387	
522 12400 Workers' Compensation	\$ 11,168	\$ 11,726	\$ 12,313	\$ 12,928	\$ 13,575	\$ 14,254	
522 12600 Disability Inc. Replace	\$ 1,225	\$ 1,286	\$ 1,351	\$ 1,418	\$ 1,489	\$ 1,563	
522 12700 Executive Life Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 13200 Uniform Allowance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 13400 Fire Stipend	\$ 1,500	\$ 1,575	\$ 1,654	\$ 1,736	\$ 1,823	\$ 1,914	
522 13500 Executive Physical Allow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Personnel Costs	\$ 449,476	\$ 472,549	\$ 496,825	\$ 522,366	\$ 549,240	\$ 577,518	
Operating Expenses							
522 30500 Advertising - Promotions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 30600 Advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 31800 Books, Publications, & Maps	\$ 2,070	\$ 2,174	\$ 2,282	\$ 2,396	\$ 2,516	\$ 2,642	
522 36000 Allocation - I.T.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 37800 Dues & Subscription	\$ 1,465	\$ 1,538	\$ 1,615	\$ 1,696	\$ 1,781	\$ 1,870	
522 39200 Allocation - Clinic	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
522 39400 Allocation - Property Ins.	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

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CITY OF OCALA, FLORIDA								
Fire System Financial Management Program Summary								
<u>Cash Outflows ⁽¹⁾</u>								
Projections of Debt Service, O&M Expenses & Capital Outlay								
522 39500 Allocation - Special Ins	\$	-	\$	-	\$	-	\$	-
522 39600 Allocation - Genl/Auto Ins.	\$	-	\$	-	\$	-	\$	-
522 39900 Allocation - Risk Mgmt	\$	-	\$	-	\$	-	\$	-
522 40700 Allocation - Info. & Publ.	\$	-	\$	-	\$	-	\$	-
522 40800 Misc Unclassified	\$	50	\$	53	\$	55	\$	61
522 41700 Mandated Disposal Items	\$	-	\$	-	\$	-	\$	-
522 41800 Payments - Other Government	\$	-	\$	-	\$	-	\$	-
522 42000 Printing & Binding	\$	280	\$	294	\$	309	\$	340
522 42200 Copy Contract	\$	-	\$	-	\$	-	\$	-
522 43900 Prof Svs. - Other	\$	-	\$	-	\$	-	\$	-
522 46800 Rental - Equip. & Land	\$	-	\$	-	\$	-	\$	-
522 47000 Allocation - Courier Service	\$	-	\$	-	\$	-	\$	-
522 47200 Allocation - Facilities Maint.	\$	-	\$	-	\$	-	\$	-
522 47300 Allocation - Cent. Svc.	\$	-	\$	-	\$	-	\$	-
522 47400 Allocation - 800 MHZ System	\$	-	\$	-	\$	-	\$	-
522 48000 Repair & Maintenance - Auto/Equip	\$	-	\$	-	\$	-	\$	-
522 48100 Repair & Maintenance - Fuel	\$	5,000	\$	5,250	\$	5,513	\$	6,078
522 48200 Repair & Maintenance - Bld/Gmnds	\$	-	\$	-	\$	-	\$	-
522 48600 Repair & Maintenance - Other Equip	\$	500	\$	525	\$	551	\$	608
522 49000 Repair & Maintenance - Radio Eqp	\$	-	\$	-	\$	-	\$	-
522 52000 Supplies - Chem & Amm	\$	-	\$	-	\$	-	\$	-
522 52100 Supplies - Cleaning	\$	-	\$	-	\$	-	\$	-
522 52800 Supplies - Office	\$	1,200	\$	1,260	\$	1,323	\$	1,459
522 53100 Supplies - Operating	\$	1,600	\$	1,680	\$	1,764	\$	1,945
522 53200 Supplies - Plaques & Cft	\$	-	\$	-	\$	-	\$	-
522 53400 Supplies - Postage	\$	400	\$	420	\$	441	\$	486
522 53600 Supplies - Small Tool & Equip	\$	2,475	\$	2,599	\$	2,729	\$	3,008
522 53900 Supplies - Sm. PC Eqp./Software	\$	-	\$	-	\$	-	\$	-
522 54000 Supplies - Uniforms	\$	3,000	\$	3,150	\$	3,308	\$	3,647
522 55300 Travel & Training	\$	9,065	\$	9,518	\$	9,994	\$	11,019
522 55400 Training - Local	\$	1,220	\$	1,281	\$	1,345	\$	1,483
522 55700 Telecomm. Dept. Fees	\$	200	\$	210	\$	221	\$	243
522 55800 Telephone (Incl. Fax)	\$	200	\$	210	\$	221	\$	243
522 57400 O & M Charge - Autos/Equip	\$	6,738	\$	7,075	\$	7,429	\$	8,190
522 57500 Replace Chg - Autos/Equip	\$	6,894	\$	7,239	\$	7,601	\$	8,360
522 57600 Utilities	\$	-	\$	-	\$	-	\$	-
522 61100 Autos & Equipment	\$	-	\$	-	\$	-	\$	-
522 62200 Buildings	\$	-	\$	-	\$	-	\$	-
522 66600 Oth Mach & Equip	\$	-	\$	-	\$	-	\$	-
Total Fixed Operating Expenses	\$	42,357	\$	44,475	\$	46,699	\$	51,485
TOTAL FIRE SAFETY MANAGEMENT DEPARTMENT EXPENSES	\$	491,833	\$	517,024	\$	543,523	\$	600,725
Fire Training								
Personnel Costs ⁽²⁾								
522 11000 Accrued Payroll Expenses	\$	-	\$	-	\$	-	\$	-
522 11100 Salaries - Regular	\$	293,857	\$	308,550	\$	323,978	\$	357,186
522 11110 Station Chang Per Shift	\$	-	\$	-	\$	-	\$	-
522 11200 Salaries - Overtime	\$	4,240	\$	4,452	\$	4,675	\$	5,154
522 11300 Salaries - Part-Time	\$	-	\$	-	\$	-	\$	-
522 11400 Salaries - Longevity	\$	6,999	\$	7,349	\$	7,717	\$	8,508
522 11500 Salaries - Spec Pay	\$	800	\$	840	\$	882	\$	972
522 11600 Employee Awards	\$	-	\$	-	\$	-	\$	-
522 11700 Salaries - Fire Allow.	\$	19,490	\$	20,465	\$	21,488	\$	23,690
522 11800 Holiday Pay	\$	-	\$	-	\$	-	\$	-
522 11900 Fire Garcia Half Time	\$	-	\$	-	\$	-	\$	-
522 12100 FICA Taxes	\$	24,892	\$	26,137	\$	27,444	\$	30,256
522 12200 Retirement Contribution	\$	56,194	\$	59,004	\$	61,954	\$	68,304
522 12300 Insurance - Life & Health	\$	25,000	\$	27,000	\$	29,160	\$	31,493
522 12400 Workers' Compensation	\$	11,338	\$	11,905	\$	12,500	\$	13,781
522 12600 Disability Inc. Replace	\$	897	\$	942	\$	989	\$	1,098
522 12700 Executive Life Insurance	\$	-	\$	-	\$	-	\$	-
522 13200 Uniform Allowance	\$	-	\$	-	\$	-	\$	-
522 13400 Fire Stipend	\$	1,500	\$	1,575	\$	1,654	\$	1,823
522 13500 Executive Physical Allow	\$	-	\$	-	\$	-	\$	-
Total Personnel Costs	\$	445,208	\$	468,218	\$	492,439	\$	544,778
Operating Expenses								
522 30500 Advertising - Promotions	\$	-	\$	-	\$	-	\$	-
522 30600 Advertising	\$	-	\$	-	\$	-	\$	-
522 31800 Books, Publications, & Maps	\$	4,950	\$	5,198	\$	5,457	\$	6,017
522 36000 Allocation - I.T.	\$	-	\$	-	\$	-	\$	-
522 37800 Dues & Subscription	\$	2,050	\$	2,153	\$	2,260	\$	2,492
522 39200 Allocation - Clinic	\$	-	\$	-	\$	-	\$	-
522 39400 Allocation - Property Ins.	\$	-	\$	-	\$	-	\$	-
522 39500 Allocation - Special Ins	\$	-	\$	-	\$	-	\$	-
522 39600 Allocation - Genl/Auto Ins.	\$	-	\$	-	\$	-	\$	-
522 39900 Allocation - Risk Mgmt	\$	-	\$	-	\$	-	\$	-
522 40700 Allocation - Info. & Publ.	\$	-	\$	-	\$	-	\$	-
522 40800 Misc Unclassified	\$	100	\$	105	\$	110	\$	122
522 41700 Mandated Disposal Items	\$	-	\$	-	\$	-	\$	-
522 41800 Payments - Other Government	\$	-	\$	-	\$	-	\$	-
522 42000 Printing & Binding	\$	1,200	\$	1,260	\$	1,323	\$	1,459
522 42200 Copy Contract	\$	464	\$	487	\$	512	\$	564
522 43900 Prof Svs. - Other	\$	95,040	\$	99,792	\$	104,782	\$	115,522
522 46800 Rental - Equip. & Land	\$	-	\$	-	\$	-	\$	-
522 47000 Allocation - Courier Service	\$	-	\$	-	\$	-	\$	-
522 47200 Allocation - Facilities Maint.	\$	-	\$	-	\$	-	\$	-
522 47300 Allocation - Cent. Svc.	\$	-	\$	-	\$	-	\$	-
522 47400 Allocation - 800 MHZ System	\$	-	\$	-	\$	-	\$	-
522 48000 Repair & Maintenance - Auto/Equip	\$	-	\$	-	\$	-	\$	-
522 48100 Repair & Maintenance - Fuel	\$	1,100	\$	1,155	\$	1,213	\$	1,337
522 48200 Repair & Maintenance - Bld/Gmnds	\$	-	\$	-	\$	-	\$	-
522 48600 Repair & Maintenance - Other Equip	\$	1,815	\$	1,906	\$	2,001	\$	2,206

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

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CITY OF OCALA, FLORIDA									
Fire System Financial Management Program Summary									
<u>Cash Outflows ⁽¹⁾</u>									
Projections of Debt Service, O&M Expenses & Capital Outlay									
522 49000 Repair & Maintenance - Radio Equip	\$	-	\$	-	\$	-	\$	-	\$
522 52000 Supplies - Chem & Amm	\$	-	\$	-	\$	-	\$	-	\$
522 52100 Supplies - Cleaning	\$	-	\$	-	\$	-	\$	-	\$
522 52800 Supplies - Office	\$	1,500	\$	1,575	\$	1,654	\$	1,736	\$
522 53100 Supplies - Operating	\$	1,600	\$	1,680	\$	1,764	\$	1,852	\$
522 53200 Supplies - Plaques & Cft	\$	-	\$	-	\$	-	\$	-	\$
522 53400 Supplies - Postage	\$	275	\$	289	\$	303	\$	318	\$
522 53600 Supplies - Small Tool & Equip	\$	3,349	\$	3,516	\$	3,692	\$	3,877	\$
522 53900 Supplies - Sm. PC Exp./Software	\$	600	\$	630	\$	662	\$	695	\$
522 54000 Supplies - Uniforms	\$	81,600	\$	85,680	\$	89,964	\$	94,462	\$
522 55300 Travel & Training	\$	7,610	\$	7,991	\$	8,390	\$	8,810	\$
522 55400 Training - Local	\$	40,500	\$	42,525	\$	44,651	\$	46,884	\$
522 55700 Telecomm. Dept. Fees	\$	-	\$	-	\$	-	\$	-	\$
522 55800 Telephone (Incl. Fax)	\$	200	\$	210	\$	221	\$	232	\$
522 57400 O & M Charge - Autos/Equip	\$	4,628	\$	4,859	\$	5,102	\$	5,357	\$
522 57500 Replace Chg - Autos/Equip	\$	4,362	\$	4,580	\$	4,809	\$	5,050	\$
522 57600 Utilities	\$	-	\$	-	\$	-	\$	-	\$
522 61100 Autos & Equipment	\$	-	\$	-	\$	-	\$	-	\$
522 62200 Buildings	\$	-	\$	-	\$	-	\$	-	\$
522 66600 Oth Mach & Equip	\$	-	\$	-	\$	-	\$	-	\$
Total Fixed Operating Expenses	\$	252,943	\$	265,590	\$	278,870	\$	292,813	\$
TOTAL FIRE TRAINING DEPARTMENT EXPENSES	\$	698,151	\$	733,809	\$	771,309	\$	810,749	\$
852,231									
Fire Communications									
<u>Personnel Costs ⁽²⁾</u>									
522 11000 Accrued Payroll Expenses	\$	-	\$	-	\$	-	\$	-	\$
522 11100 Salaries - Regular	\$	206,251	\$	216,563	\$	227,391	\$	238,761	\$
522 11110 Station Chang Per Shift	\$	-	\$	-	\$	-	\$	-	\$
522 11200 Salaries - Overtime	\$	28,266	\$	29,679	\$	31,163	\$	32,721	\$
522 11300 Salaries - Part-Time	\$	-	\$	-	\$	-	\$	-	\$
522 11400 Salaries - Longevity	\$	2,300	\$	2,415	\$	2,536	\$	2,663	\$
522 11500 Salaries - Spec Pay	\$	-	\$	-	\$	-	\$	-	\$
522 11600 Employee Awards	\$	-	\$	-	\$	-	\$	-	\$
522 11700 Salaries - Fire Allow.	\$	-	\$	-	\$	-	\$	-	\$
522 11800 Holiday Pay	\$	-	\$	-	\$	-	\$	-	\$
522 11900 Fire Garcia Half Time	\$	-	\$	-	\$	-	\$	-	\$
522 12100 FICA Taxes	\$	18,116	\$	19,022	\$	19,973	\$	20,972	\$
522 12200 Retirement Contribution	\$	40,898	\$	42,943	\$	45,090	\$	47,345	\$
522 12300 Insurance - Life & Health	\$	40,000	\$	43,200	\$	46,656	\$	50,388	\$
522 12400 Workers' Compensation	\$	16,752	\$	17,590	\$	18,469	\$	19,393	\$
522 12600 Disability Inc. Replace	\$	671	\$	705	\$	740	\$	777	\$
522 12700 Executive Life Insurance	\$	-	\$	-	\$	-	\$	-	\$
522 13200 Uniform Allowance	\$	900	\$	945	\$	992	\$	1,042	\$
522 13400 Fire Stipend	\$	600	\$	630	\$	662	\$	695	\$
522 13500 Executive Physical Allow	\$	-	\$	-	\$	-	\$	-	\$
Total Personnel Costs	\$	354,754	\$	373,692	\$	393,673	\$	414,756	\$
437,006	\$								
<u>Operating Expenses</u>									
522 30500 Advertising - Promotions	\$	-	\$	-	\$	-	\$	-	\$
522 30600 Advertising	\$	-	\$	-	\$	-	\$	-	\$
522 31800 Books, Publications, & Maps	\$	1,400	\$	1,470	\$	1,544	\$	1,621	\$
522 36000 Allocation - I.T.	\$	-	\$	-	\$	-	\$	-	\$
522 37800 Dues & Subscription	\$	1,975	\$	2,074	\$	2,177	\$	2,286	\$
522 39200 Allocation - Clinic	\$	-	\$	-	\$	-	\$	-	\$
522 39400 Allocation - Property Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39500 Allocation - Special Ins	\$	-	\$	-	\$	-	\$	-	\$
522 39600 Allocation - Genl/Auto Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39900 Allocation - Risk Mgmt	\$	-	\$	-	\$	-	\$	-	\$
522 40700 Allocation - Info. & Publ.	\$	-	\$	-	\$	-	\$	-	\$
522 40800 Misc Unclassified	\$	-	\$	-	\$	-	\$	-	\$
522 41700 Mandated Disposal Items	\$	-	\$	-	\$	-	\$	-	\$
522 41800 Payments - Other Government	\$	-	\$	-	\$	-	\$	-	\$
522 42000 Printing & Binding	\$	-	\$	-	\$	-	\$	-	\$
522 42200 Copy Contract	\$	-	\$	-	\$	-	\$	-	\$
522 43900 Prof Svs. - Other	\$	31,950	\$	33,548	\$	35,225	\$	36,986	\$
522 46800 Rental - Equip. & Land	\$	7,400	\$	7,770	\$	8,159	\$	8,566	\$
522 47000 Allocation - Courier Service	\$	-	\$	-	\$	-	\$	-	\$
522 47200 Allocation - Facilities Maint.	\$	-	\$	-	\$	-	\$	-	\$
522 47300 Allocation - Cent. Svc.	\$	-	\$	-	\$	-	\$	-	\$
522 47400 Allocation - 800 MHz System	\$	17,291	\$	18,156	\$	19,063	\$	20,016	\$
522 48000 Repair & Maintenance - Auto/Equip	\$	-	\$	-	\$	-	\$	-	\$
522 48100 Repair & Maintenance - Fuel	\$	-	\$	-	\$	-	\$	-	\$
522 48200 Repair & Maintenance - Bld/Grnds	\$	-	\$	-	\$	-	\$	-	\$
522 48600 Repair & Maintenance - Other Equip	\$	-	\$	-	\$	-	\$	-	\$
522 49000 Repair & Maintenance - Radio Equip	\$	43,486	\$	45,660	\$	47,943	\$	50,340	\$
522 52000 Supplies - Chem & Amm	\$	-	\$	-	\$	-	\$	-	\$
522 52100 Supplies - Cleaning	\$	-	\$	-	\$	-	\$	-	\$
522 52800 Supplies - Office	\$	-	\$	-	\$	-	\$	-	\$
522 53100 Supplies - Operating	\$	1,800	\$	1,890	\$	1,985	\$	2,084	\$
522 53200 Supplies - Plaques & Cft	\$	-	\$	-	\$	-	\$	-	\$
522 53400 Supplies - Postage	\$	-	\$	-	\$	-	\$	-	\$
522 53600 Supplies - Small Tool & Equip	\$	4,625	\$	4,856	\$	5,099	\$	5,354	\$
522 53900 Supplies - Sm. PC Exp./Software	\$	7,082	\$	7,436	\$	7,808	\$	8,198	\$
522 54000 Supplies - Uniforms	\$	1,200	\$	1,260	\$	1,323	\$	1,389	\$
522 55300 Travel & Training	\$	-	\$	-	\$	-	\$	-	\$
522 55400 Training - Local	\$	-	\$	-	\$	-	\$	-	\$
522 55700 Telecomm. Dept. Fees	\$	12,962	\$	13,610	\$	14,291	\$	15,005	\$
522 55800 Telephone (Incl. Fax)	\$	19,900	\$	20,895	\$	21,940	\$	23,037	\$
522 57400 O & M Charge - Autos/Equip	\$	-	\$	-	\$	-	\$	-	\$
522 57500 Replace Chg - Autos/Equip	\$	-	\$	-	\$	-	\$	-	\$
522 57600 Utilities	\$	-	\$	-	\$	-	\$	-	\$
522 61100 Autos & Equipment	\$	-	\$	-	\$	-	\$	-	\$

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

Page 5 of 6

CITY OF OCALA, FLORIDA									
Fire System Financial Management Program Summary									
<u>Cash Outflows</u> ⁽¹⁾									
Projections of Debt Service, O&M Expenses & Capital Outlay									
522 62200 Buildings	\$	-	\$	-	\$	-	\$	-	\$
522 66600 Oth Mach & Equip	\$	-	\$	-	\$	-	\$	-	\$
Total Fixed Operating Expenses	\$	151,071	\$	158,625	\$	166,556	\$	174,884	\$
TOTAL FIRE COMMUNICATIONS DEPARTMENT EXPENSES	\$	505,825	\$	532,317	\$	560,229	\$	589,640	\$
620,633	\$								\$
653,298	\$								\$
Fire Special Ops									
Personnel Costs ⁽²⁾									
522 11000 Accrued Payroll Expenses	\$	-	\$	-	\$	-	\$	-	\$
522 11100 Salaries - Regular	\$	-	\$	-	\$	-	\$	-	\$
522 11110 Station Chang Per Shift	\$	-	\$	-	\$	-	\$	-	\$
522 11200 Salaries - Overtime	\$	-	\$	-	\$	-	\$	-	\$
522 11300 Salaries - Part-Time	\$	-	\$	-	\$	-	\$	-	\$
522 11400 Salaries - Longevity	\$	-	\$	-	\$	-	\$	-	\$
522 11500 Salaries - Spec Pay	\$	-	\$	-	\$	-	\$	-	\$
522 11600 Employee Awards	\$	-	\$	-	\$	-	\$	-	\$
522 11700 Salaries - Fire Allow.	\$	-	\$	-	\$	-	\$	-	\$
522 11800 Holiday Pay	\$	-	\$	-	\$	-	\$	-	\$
522 11900 Fire Garcia Half Time	\$	-	\$	-	\$	-	\$	-	\$
522 12100 FICA Taxes	\$	-	\$	-	\$	-	\$	-	\$
522 12200 Retirement Contribution	\$	-	\$	-	\$	-	\$	-	\$
522 12300 Insurance - Life & Health	\$	-	\$	-	\$	-	\$	-	\$
522 12400 Workers' Compensation	\$	-	\$	-	\$	-	\$	-	\$
522 12600 Disability Inc. Replace	\$	-	\$	-	\$	-	\$	-	\$
522 12700 Executive Life Insurance	\$	-	\$	-	\$	-	\$	-	\$
522 13200 Uniform Allowance	\$	-	\$	-	\$	-	\$	-	\$
522 13400 Fire Stipend	\$	-	\$	-	\$	-	\$	-	\$
522 13500 Executive Physical Allow	\$	-	\$	-	\$	-	\$	-	\$
Total Personnel Costs	\$	-	\$	-	\$	-	\$	-	\$
Operating Expenses									
522 30500 Advertising - Promotions	\$	-	\$	-	\$	-	\$	-	\$
522 30600 Advertising	\$	-	\$	-	\$	-	\$	-	\$
522 31800 Books, Publications, & Maps	\$	100	\$	105	\$	110	\$	122	\$
522 36000 Allocation - I.T.	\$	-	\$	-	\$	-	\$	-	\$
522 37800 Dues & Subscription	\$	-	\$	-	\$	-	\$	-	\$
522 39200 Allocation - Clinic	\$	-	\$	-	\$	-	\$	-	\$
522 39400 Allocation - Property Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39500 Allocation - Special Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39600 Allocation - Genl/Auto Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39900 Allocation - Risk Mgmt	\$	-	\$	-	\$	-	\$	-	\$
522 40700 Allocation - Info. & Publ.	\$	-	\$	-	\$	-	\$	-	\$
522 40800 Misc Unclassified	\$	-	\$	-	\$	-	\$	-	\$
522 41700 Mandated Disposal Items	\$	1,250	\$	1,313	\$	1,378	\$	1,519	\$
522 41800 Payments - Other Government	\$	-	\$	-	\$	-	\$	-	\$
522 42000 Printing & Binding	\$	80	\$	84	\$	88	\$	97	\$
522 42200 Copy Contract	\$	-	\$	-	\$	-	\$	-	\$
522 43900 Prof Svs. - Other	\$	5,000	\$	5,250	\$	5,513	\$	6,078	\$
522 46800 Rental - Equip. & Land	\$	-	\$	-	\$	-	\$	-	\$
522 47000 Allocation - Courier Service	\$	-	\$	-	\$	-	\$	-	\$
522 47200 Allocation - Facilities Maint.	\$	-	\$	-	\$	-	\$	-	\$
522 47300 Allocation - Cent. Svc.	\$	-	\$	-	\$	-	\$	-	\$
522 47400 Allocation - 800 MHZ System	\$	447	\$	469	\$	493	\$	543	\$
522 48000 Repair & Maintenance - Auto/Equip	\$	100	\$	105	\$	110	\$	122	\$
522 48100 Repair & Maintenance - Fuel	\$	-	\$	-	\$	-	\$	-	\$
522 48200 Repair & Maintenance - Bld/Grms	\$	-	\$	-	\$	-	\$	-	\$
522 48600 Repair & Maintenance - Other Equip	\$	1,050	\$	1,103	\$	1,158	\$	1,276	\$
522 49000 Repair & Maintenance - Radio Eqp	\$	1,000	\$	1,050	\$	1,103	\$	1,216	\$
522 52000 Supplies - Chem & Amm	\$	3,000	\$	3,150	\$	3,308	\$	3,647	\$
522 52100 Supplies - Cleaning	\$	-	\$	-	\$	-	\$	-	\$
522 52800 Supplies - Office	\$	-	\$	-	\$	-	\$	-	\$
522 53100 Supplies - Operating	\$	500	\$	525	\$	551	\$	608	\$
522 53200 Supplies - Plaques & Cft	\$	-	\$	-	\$	-	\$	-	\$
522 53400 Supplies - Postage	\$	-	\$	-	\$	-	\$	-	\$
522 53600 Supplies - Small Tool & Equip	\$	8,480	\$	8,904	\$	9,349	\$	10,307	\$
522 53900 Supplies - Sm. PC Eqp./Software	\$	-	\$	-	\$	-	\$	-	\$
522 54000 Supplies - Uniforms	\$	7,450	\$	7,823	\$	8,214	\$	9,056	\$
522 55300 Travel & Training	\$	2,885	\$	3,029	\$	3,181	\$	3,507	\$
522 55400 Training - Local	\$	3,990	\$	4,190	\$	4,399	\$	4,850	\$
522 55700 Telecomm. Dept. Fees	\$	-	\$	-	\$	-	\$	-	\$
522 55800 Telephone (Incl. Fax)	\$	600	\$	630	\$	662	\$	729	\$
522 57400 O & M Charge - Autos/Equip	\$	2,565	\$	2,693	\$	2,826	\$	3,118	\$
522 57500 Replace Chg - Autos/Equip	\$	2,933	\$	3,080	\$	3,234	\$	3,566	\$
522 57600 Utilities	\$	-	\$	-	\$	-	\$	-	\$
522 61100 Autos & Equipment	\$	-	\$	-	\$	-	\$	-	\$
522 62200 Buildings	\$	-	\$	-	\$	-	\$	-	\$
522 66600 Oth Mach & Equip	\$	-	\$	-	\$	-	\$	-	\$
Total Fixed Operating Expenses	\$	41,430	\$	43,502	\$	45,677	\$	50,358	\$
TOTAL FIRE SPECIAL OPS DEPARTMENT EXPENSES	\$	41,430	\$	43,502	\$	45,677	\$	50,358	\$
52,876	\$								\$
Public Info/Education									
Personnel Costs ⁽²⁾									
522 11000 Accrued Payroll Expenses	\$	-	\$	-	\$	-	\$	-	\$
522 11100 Salaries - Regular	\$	74,107	\$	77,812	\$	81,703	\$	85,788	\$
522 11110 Station Chang Per Shift	\$	-	\$	-	\$	-	\$	-	\$
522 11200 Salaries - Overtime	\$	2,120	\$	2,226	\$	2,337	\$	2,577	\$
522 11300 Salaries - Part-Time	\$	-	\$	-	\$	-	\$	-	\$
522 11400 Salaries - Longevity	\$	2,223	\$	2,334	\$	2,451	\$	2,702	\$
522 11500 Salaries - Spec Pay	\$	-	\$	-	\$	-	\$	-	\$
522 11600 Employee Awards	\$	-	\$	-	\$	-	\$	-	\$
522 11700 Salaries - Fire Allow.	\$	-	\$	-	\$	-	\$	-	\$
522 11800 Holiday Pay	\$	-	\$	-	\$	-	\$	-	\$

Fire Service Fee Study Final Report

Appendix C: Schedule 5 – Cash Outflows

Page 6 of 6

CITY OF OCALA, FLORIDA									
Fire System Financial Management Program Summary									
Cash Outflows ⁽¹⁾									
Projections of Debt Service, O&M Expenses & Capital Outlay									
522 11900 Fire Garcia Half Time	\$	-	\$	-	\$	-	\$	-	\$
522 12100 FICA Taxes	\$	6,001	\$	6,301	\$	6,617	\$	6,947	\$
522 12200 Retirement Contribution	\$	13,548	\$	14,226	\$	14,937	\$	15,684	\$
522 12300 Insurance - Life & Health	\$	5,000	\$	5,400	\$	5,832	\$	6,299	\$
522 12400 Workers' Compensation	\$	2,792	\$	2,932	\$	3,078	\$	3,232	\$
522 12600 Disability Inc. Replace	\$	306	\$	321	\$	337	\$	354	\$
522 12700 Executive Life Insurance	\$	-	\$	-	\$	-	\$	-	\$
522 13200 Uniform Allowance	\$	500	\$	525	\$	551	\$	579	\$
522 13400 Fire Stipend	\$	-	\$	-	\$	-	\$	-	\$
522 13500 Executive Physical Allow	\$	-	\$	-	\$	-	\$	-	\$
Total Personnel Costs	\$	106,597	\$	112,077	\$	117,843	\$	123,910	\$
Operating Expenses									
522 30500 Advertising - Promotions	\$	11,440	\$	12,012	\$	12,613	\$	13,243	\$
522 30600 Advertising	\$	-	\$	-	\$	-	\$	-	\$
522 31800 Books, Publications, & Maps	\$	100	\$	105	\$	110	\$	116	\$
522 36000 Allocation - I.T.	\$	-	\$	-	\$	-	\$	-	\$
522 37800 Dues & Subscription	\$	100	\$	105	\$	110	\$	116	\$
522 39200 Allocation - Clinic	\$	-	\$	-	\$	-	\$	-	\$
522 39400 Allocation - Property Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39500 Allocation - Special Ins	\$	-	\$	-	\$	-	\$	-	\$
522 39600 Allocation - Genl/Auto Ins.	\$	-	\$	-	\$	-	\$	-	\$
522 39900 Allocation - Risk Mgmt	\$	-	\$	-	\$	-	\$	-	\$
522 40700 Allocation - Info. & Publ.	\$	-	\$	-	\$	-	\$	-	\$
522 40800 Misc Unclassified	\$	-	\$	-	\$	-	\$	-	\$
522 41700 Mandated Disposal Items	\$	-	\$	-	\$	-	\$	-	\$
522 41800 Payments - Other Government	\$	-	\$	-	\$	-	\$	-	\$
522 42000 Printing & Binding	\$	8,000	\$	8,400	\$	8,820	\$	9,261	\$
522 42200 Copy Contract	\$	-	\$	-	\$	-	\$	-	\$
522 43900 Prof Svs. - Other	\$	-	\$	-	\$	-	\$	-	\$
522 46800 Rental - Equip. & Land	\$	1,286	\$	1,350	\$	1,418	\$	1,489	\$
522 47000 Allocation - Courier Service	\$	-	\$	-	\$	-	\$	-	\$
522 47200 Allocation - Facilities Maint.	\$	-	\$	-	\$	-	\$	-	\$
522 47300 Allocation - Cent. Svc.	\$	-	\$	-	\$	-	\$	-	\$
522 47400 Allocation - 800 MHZ System	\$	-	\$	-	\$	-	\$	-	\$
522 48000 Repair & Maintenance - Auto/Equip	\$	-	\$	-	\$	-	\$	-	\$
522 48100 Repair & Maintenance - Fuel	\$	1,000	\$	1,050	\$	1,103	\$	1,158	\$
522 48200 Repair & Maintenance - Bld/Gmnds	\$	-	\$	-	\$	-	\$	-	\$
522 48600 Repair & Maintenance - Other Equip	\$	-	\$	-	\$	-	\$	-	\$
522 49000 Repair & Maintenance - Radio Eqp	\$	-	\$	-	\$	-	\$	-	\$
522 52000 Supplies - Chem & Amm	\$	-	\$	-	\$	-	\$	-	\$
522 52100 Supplies - Cleaning	\$	-	\$	-	\$	-	\$	-	\$
522 52800 Supplies - Office	\$	300	\$	315	\$	331	\$	347	\$
522 53100 Supplies - Operating	\$	500	\$	525	\$	551	\$	579	\$
522 53200 Supplies - Plaques & Cft	\$	2,500	\$	2,625	\$	2,756	\$	2,894	\$
522 53400 Supplies - Postage	\$	-	\$	-	\$	-	\$	-	\$
522 53600 Supplies - Small Tool & Equip	\$	500	\$	525	\$	551	\$	579	\$
522 53900 Supplies - Sm. PC Eqp./Software	\$	1,480	\$	1,554	\$	1,632	\$	1,713	\$
522 54000 Supplies - Uniforms	\$	-	\$	-	\$	-	\$	-	\$
522 55300 Travel & Training	\$	1,890	\$	1,985	\$	2,084	\$	2,188	\$
522 55400 Training - Local	\$	-	\$	-	\$	-	\$	-	\$
522 55700 Telecomm. Dept. Fees	\$	-	\$	-	\$	-	\$	-	\$
522 55800 Telephone (Incl. Fax)	\$	200	\$	210	\$	221	\$	232	\$
522 57400 O & M Charge - Autos/Equip	\$	3,392	\$	3,562	\$	3,740	\$	3,927	\$
522 57500 Replace Chg. - Autos/Equip	\$	3,552	\$	3,730	\$	3,916	\$	4,112	\$
522 57600 Utilities	\$	-	\$	-	\$	-	\$	-	\$
522 61100 Autos & Equipment	\$	-	\$	-	\$	-	\$	-	\$
522 62200 Buildings	\$	-	\$	-	\$	-	\$	-	\$
522 66600 Oth Mach & Equip	\$	-	\$	-	\$	-	\$	-	\$
Total Fixed Operating Expenses	\$	36,240	\$	38,052	\$	39,955	\$	41,952	\$
TOTAL PUBLIC INFO & EDUCATION DEPARTMENT EXPENSES	\$	142,837	\$	150,129	\$	157,797	\$	165,862	\$
New Station Incremental O & M									
Personnel Costs									
New Station #6 Incremental Operating Costs (Personnel)	\$	-	\$	850,000	\$	851,200	\$	893,800	\$
New Station #6 Incremental Operating Costs (Additional Personnel)	\$	-	\$	-	\$	706,600	\$	707,200	\$
Total Personnel Costs	\$	-	\$	850,000	\$	1,557,800	\$	1,601,000	\$
Operating Expenses									
New Station #6 Incremental Operating Costs (Operations) ⁽²⁾	\$	-	\$	182,500	\$	332,700	\$	345,200	\$
Total Fixed Operating Expenses	\$	-	\$	182,500	\$	332,700	\$	345,200	\$
TOTAL NEW STATION INCREMENTAL O & M EXPENSES	\$	-	\$	1,032,500	\$	1,890,500	\$	1,946,200	\$
Utility Billing Service Allocation	\$	-	\$	157,000	\$	164,850	\$	173,093	\$
Professional Services (Annual Financial Update)	\$	-	\$	15,000	\$	15,750	\$	16,538	\$
Bond/Debt Service Costs									
Cummulative Total Debt Service (as calculated)	\$	-	\$	-	\$	6,963	\$	6,963	\$
State Revolving Loans	\$	-	\$	-	\$	-	\$	-	\$
Short-Term Debt Service	\$	-	\$	-	\$	-	\$	-	\$
Interim Financing Interest Payments	\$	-	\$	-	\$	-	\$	-	\$
Total Bond/Debt Service Costs	\$	-	\$	-	\$	6,963	\$	6,963	\$
Transfers Out									
Transfers Out	\$	-	\$	-	\$	-	\$	-	\$
Total Transfers Out	\$	-	\$	-	\$	-	\$	-	\$
Other Below the Coverage Line Expenses									
Principal - Line of Credit	\$	-	\$	-	\$	-	\$	-	\$
Interest - Line of Credit	\$	-	\$	-	\$	-	\$	-	\$
Total Other Below the Coverage Line Expenses	\$	-	\$	-	\$	-	\$	-	\$
Total Capital Outlay	\$	-	\$	-	\$	-	\$	-	\$
Total O&M, Debt Service, Transfers, & Capital Outlay	\$	10,804,037	\$	12,572,056	\$	14,039,261	\$	14,729,428	\$

(1) Excludes Fire Rescue (EMS) Department as these costs are assumed to be funded by the General Fund.

(2) Per discussions with City Staff, FICA Taxes and Retirement Contribution line items within each department are calculated as a percentage of the total salary expenses within its

(3) New Station #6 Incremental O & M costs include additional costs resulting from proposed FY 2008 Squad Vehicle purchase.

(1) Excludes Fire Rescue (EMS) Department as these costs are assumed to be funded by the General Fund.

(2) Per discussions with City Staff, FICA Taxes and Retirement Contribution line items within each department are calculated as a percentage of the total salary expenses within its

(3) New Station #6 Incremental O & M costs include additional costs resulting from proposed FY 2008 Squad Vehicle purchase.

Fire Service Fee Study Final Report

Appendix C: Schedule 6 – Pro Forma

CITY OF OCALA, FLORIDA						
Fire System Financial Management Program Summary						
<i>Forecast of Net Revenues and Debt Service Coverage</i>						
Revenue & Expenses	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenue Subject to Rate Increases						
Fire Usage Rate Revenue ⁽¹⁾	\$ 10,789,202	\$ 5,734,997	\$ 5,734,997	\$ 6,871,686	\$ 6,905,292	\$ 7,381,409
Additional Rate Revenue From Partial Prior Year Rate Increase	\$ -	\$ 0	\$ -	\$ -	\$ -	\$ -
Additional Rate Revenue from Growth	\$ -	\$ -	\$ 28,184	\$ 33,605	\$ 33,605	\$ 35,748
Wtd. Average Proposed Rate Increase	0.00%	0.00%	19.23%	0.00%	6.38%	0.00%
Rate Revenue from Rate Increase	\$ 0	\$ -	\$ 1,108,505	\$ -	\$ 442,513	\$ -
Price Elasticity Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Rate Revenue Subject to Growth & Rate Increase	\$ 10,789,202	\$ 5,734,997	\$ 6,871,686	\$ 6,905,292	\$ 7,381,409	\$ 7,417,158
Plus: Other Operating Revenue ⁽²⁾	\$ -	\$ 7,457,500	\$ 7,910,000	\$ 8,600,000	\$ 8,160,000	\$ 9,000,000
Total Operating Revenue	\$ 10,789,202	\$ 13,192,497	\$ 14,781,686	\$ 15,505,292	\$ 15,541,409	\$ 16,417,158
Less: Operations and Maintenance Expense	\$ 10,804,037	\$ 12,572,056	\$ 14,032,298	\$ 14,722,465	\$ 15,484,144	\$ 16,286,330
Net Operating Income	\$ (14,835)	\$ 620,441	\$ 749,388	\$ 782,827	\$ 57,265	\$ 130,828
Plus: Non Operating Income (Expense)						
Non Operating Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Earned on Invested Funds	\$ 219	\$ 8,161	\$ 24,911	\$ 36,326	\$ 56,900	\$ 60,545
Fire Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers In	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Non Operating Income	\$ 219	\$ 8,161	\$ 24,911	\$ 36,326	\$ 56,900	\$ 60,545
Net Income	\$ (14,616)	\$ 628,603	\$ 774,299	\$ 819,153	\$ 114,165	\$ 191,372
Less: Fire Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Transfers In	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Income Available for Debt Service	\$ (14,616)	\$ 628,603	\$ 774,299	\$ 819,153	\$ 114,165	\$ 191,372
Senior Lien Debt Service Coverage						
Existing Senior Lien Debt	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New Senior Lien Debt - Input	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cumulative New Senior Lien Debt for Additional Borrowings	\$ -	\$ -	\$ 6,963	\$ 6,963	\$ 6,963	\$ 6,963
Total Senior Lien Debt Service	\$ -	\$ -	\$ 6,963	\$ 6,963	\$ 6,963	\$ 6,963
Senior Lien Debt Service Coverage	0.00 Req'd	0.00	0.00	0.00	0.00	0.00
Net Income Available for Debt Service	\$ (14,616)	\$ 628,603	\$ 774,299	\$ 819,153	\$ 114,165	\$ 191,372
Plus: Transfers In	\$ -	\$ 628,603	\$ 696	\$ 811,493	\$ 696	\$ 183,713
Less: Transfers Out	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Existing Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Revenue Bond Debt Service	\$ -	\$ -	\$ (6,963)	\$ (6,963)	\$ (6,963)	\$ (6,963)
Less: Interim Financing Interest Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: State Revolving Loans	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Short-Term Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Payment of Debt Service with Water Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Payment of Debt Service with Irrigation Impact Fees	\$ -	\$ 628,603	\$ 8,356	\$ 819,153	\$ 8,356	\$ 191,372
Less: Payment of Debt Service with Sewer Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Other Below the Coverage Line Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Capital Improvement Fund Contributions	\$ -	\$ -	\$ (6,963)	\$ (6,963)	\$ (6,963)	\$ (6,963)
Less: Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Renewal & Replacement Transfer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Flow	\$ (14,616)	\$ 1,885,809	\$ 769,425	\$ 2,435,873	\$ 109,291	\$ 552,531
Unrestricted Reserve Fund - Beginning of Year Balance	\$ (14,616)	\$ 628,603	\$ 767,336	\$ 812,190	\$ 107,202	\$ 184,409
Minimum Working Capital Reserve Target	\$ (14,616)	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve Fund Balance in Excess of Working Capital Target	\$ -	\$ 628,603	\$ 767,336	\$ 812,190	\$ 107,202	\$ 184,409
Less: Reserve Fund Balance used for Cash Flow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve Fund Balance in Excess of Working Capital Target Net of Current Year Cash Flow	\$ -	\$ 628,603	\$ 767,336	\$ 812,190	\$ 107,202	\$ 184,409
Net Cash Flow After Use of Reserve Funds	\$ -	\$ 628,603	\$ 767,336	\$ 812,190	\$ 107,202	\$ 184,409
Less: CIP Projects Designated to be Paid with Cash	\$ 21,907	\$ 7,291	\$ 635,894	\$ 1,403,230	\$ 2,215,420	\$ 2,322,622
Net Cash Flow to Unrestricted Reserve Fund	\$ (21,907)	\$ 621,312	\$ 131,442	\$ (591,040)	\$ (2,108,217)	\$ (2,138,212)
Unrestricted Reserve Fund - Beginning of Year Balance	\$ (14,616)	\$ 628,603	\$ 767,336	\$ 812,190	\$ 107,202	\$ 184,409
Cash Flow Surplus	\$ (14,616)	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Reserve Fund Balance used for Cash Flow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less: Projects Designated to be Paid with Cash	\$ 21,907	\$ 7,291	\$ 635,894	\$ 1,403,230	\$ 2,215,420	\$ 2,322,622
Less: Projects Paid with Reserve Funds (Non Specified Funding)	\$ -	\$ 628,603	\$ 1,403,230	\$ 2,208,370	\$ 2,322,622	\$ 2,442,950
Unrestricted Reserve Fund - End of Year Balance	\$ (7,325)	\$ 1,264,497	\$ 2,806,460	\$ 4,423,789	\$ 4,645,243	\$ 4,949,980
Minimum Working Capital Reserve Target	\$ (14,616)	\$ -	\$ -	\$ -	\$ -	\$ -
Excess (Deficiency) of Working Capital Reserves to Target	\$ 7,291	\$ 1,264,497	\$ 2,806,460	\$ 4,423,789	\$ 4,645,243	\$ 4,949,980

(1) Fire Usage Rate Revenue in FY 2006 is a subsidy from the General Fund less the Fire Rescue (EMS) portion. Collection of Fire Usage Revenue will actually begin FY 2007.

(2) Subsidy from the General Fund.

Fire Service Fee Study Final Report

Appendix C: Schedule 7 – Capital Projects Funding

CITY OF OCALA, FLORIDA						
Fire System Financial Management Program Summary						
<u>CIP Funding Sources</u>						
<u>Sources</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Fire Impact Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fleet Replacement Fund	\$ 294,540	\$ -	\$ -	\$ -	\$ -	\$ -
1/8Th Mill Fund	\$ 1,050,600	\$ 955,000	\$ 445,000	\$ -	\$ -	\$ -
Revenue Fund	\$ -	\$ -	\$ 0	\$ -	\$ -	\$ -
Interim Financing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Short-Term Loan/Note Proceeds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Revenue Bond Debt Proceeds	\$ -	\$ -	\$ 75,000	\$ -	\$ -	\$ -
Projects Designated To Be Paid With Cash	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Projects Paid	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ -	\$ -	\$ -
Total CIP Input	\$ 1,345,140	\$ 955,000	\$ 520,000	\$ -	\$ -	\$ -
Variance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

MEMORANDUM

TO: City Council
Paul Nugent, City Manager

FROM: Patrick G. Gilligan, City Attorney

RE: Fire Protection Services User Fee

DATE: July 14, 2006

I have had the opportunity to review the legal opinion letter submitted by the firm of Lewis, Longman & Walker, P.A., regarding the City's proposal to charge a user fee for fire protection services ("Fire Services Fee"). That opinion letter concludes that such a fee would be legally valid under Florida law. We concur with that opinion.

Specifically, I have reviewed the law relied upon by Mr. Lewis. His analysis appears sound and his research mirrors our independent research. Mr. Lewis's argument properly relies on the eight factors listed in the Florida Supreme Court's decision of City of Gainesville v. State, 863 So.2d 135, 145 (Fla. 2003) to determine whether a charge is a user fee or a special assessment (or tax). They are:

- (1) the name given to the charge;
- (2) the relationship between the amount of the charge and the value of the service or benefit conferred on the property owner;
- (3) whether the charge is charged only to users of the service or is charged to all residents of a given area;
- (4) whether the fee is voluntary – that is, whether a property owner may avoid the charge by refusing the service;
- (5) whether the charge is a monthly charge or a one-time charge;
- (6) whether the fee is charged to recover the cost of improvements to a defined area or infrastructure, or the costs of the routine provision of services;
- (7) whether the charge is for a traditional utility; and

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(8) whether the charge is statutorily authorized as a fee.

Id. at 145. My reading of the case is consistent with Mr. Lewis's, including the directive that the factors must be considered and balanced in light of the specific circumstances of the charge being reviewed and that no single factor is determinative. Id.

He concludes that five of the factors (1, 2, 3, 5 and 6) support the proposition that the charge is a user fee. He notes, and we agree, that two (7 and 8) of the factors are questionable but not problematic. He also notes, and we agree that one factor (5, the mandatory nature of the charge) speaks against characterizing the charge as a user fee.

After a thorough review of his conclusions, I have determined that Mr. Lewis's reasoning is solid. Our independent research causes me to reach the same conclusion. However, I do have concerns over his analysis of the mandatory nature of the fee. Although Mr. Lewis correctly states that this factor is not dispositive, the issue appears to be more nuanced. The case law suggests that when a utility fee *is authorized by statute* the mandatory nature of the fee will not be dispositive. *See City of Gainesville*, 863 So.2d at 146, *citing State v. City of Port Orange*, 650 So.2d 1, 3 (Fla. 1994). As mentioned earlier in Mr. Lewis's letter, the research reveals no specific grant of statutory authority to the City to impose a fee for fire protection services, and a determination of such a factor would be a "close call."

This concern is mitigated, however, by what the cases define as "mandatory." Here the case law would suggest that property owners can avoid the fee either by not developing the property or by renting out the property—making the fee arguably voluntary. *See, generally, City of Gainesville*, 863 So.2d at 146.

As stated above, my independent review of the law failed to turn up any contrary case law or statute (beyond what is listed above) which would call this analysis into doubt. Accordingly, as no appellate opinions exist regarding fire services fees like the one proposed here, any challenge to the fee would present a case of first impression in Florida.

In conclusion and subject to the reservations expressed herein, it is my legal opinion that the City can impose the proposed Fire Services Fee.

GILLIGAN, KING, GOODING & GIFFORD, P.A.

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MEMORANDUM

TO: City Council
Rick Horst, City Manager

FROM: Patrick G. Gilligan, City Attorney

RE: School Board exemption to fire service availability and impact fees

DATE: November 30, 2010

Issue: Is the School Board exempt from having to pay the Fire Service User Fee and the Fire Service Impact Fee?

Factual Background: City Council has inquired whether the Marion County School Board is obligated to pay the fire service user fee. This issue was initially addressed in 2007. On January 8, 2007, I received a letter from Beverly A. Morris, counsel for the Marion County School Board, questioning the City's ability to impose the Emergency Fire Service Availability Fee (City Ordinance 5554) and the Emergency Fire Service Impact Fee (City Ordinance 5555) on the School Board pursuant to Florida Statute, §1013.371(2006). I was tasked then to research the issue by City Manager, Paul Nugent. I concluded then that the School Board was not obligated to pay the impact fee, but was obligated to pay the availability (now called per a code amendment the "Emergency Fire Service User Fee"¹) codified in Chapter 30, Article III of the City of Ocala Code of Ordinances. I have updated my research and my opinions on both the impact fee and the user fee are set forth below.

Discussion: Florida Statute, §166.201 authorizes a municipality to raise funds by the imposition of user fees or charges authorized by ordinance, which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law. As discussed below, I believe the "Emergency Fire Service User Fee" is a user fee as proper user fee.

The School Board claims it is exempt from paying certain imposed fees. Specifically, they argue they are exempt from paying impact and service availability fees pursuant to Florida Statute, §1013.371(1)(a). That statute reads, in pertinent part:

- (a) Except as otherwise provided in paragraph (b), *all public educational and ancillary plants* constructed by a board must conform to the Florida

¹ The code was amended in 2007 to make clear that this was a "user" fee and not an "availability" fee which it had inadvertently been labeled in the original ordinance as a result of a scrivener's error.

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Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees. (emphasis added).

As the “Emergency Fire Service Impact Fee” described in Chapter 30, Article I of the Code of Ordinances is clearly an impact fee, it is my opinion that the School Board is exempt from paying “impact” fees under those sections.

However, the “Emergency Fire Service User Fee” is a different issue. Although the statute explicitly exempts the School Board from paying “service availability fees,” I do not believe this is an availability fee. Rather, I believe it to be a “user” fee authorized by Florida Statute, §166.201.

The Florida Statutes do not define a “service availability fee.” Case law, however, is helpful in defining what an “availability fee” is. In Florida Public Service Commission v. Florida Waterworks Association, 731 So.2d 836, 839 (Fla. 1st DCA 1999), *quoting* Rolling Oaks Utilities v. Florida Public Service Commission, 533 So.2d 770, 773 (Fla. 1st DCA 1988), the Court explained the nature and purpose of “service availability fees”:

Although the Commission does not have a formal rule or policy requiring a utility to maintain a reserve capacity, in given cases it makes an adjustment to a utility's rate base which, in a sense, rewards the utility for its investment in plant capacity which the utility has readily available, but not currently in use. By allowing a margin reserve increment to the rate base, the Commission permits the utility to charge its existing customers a portion of the cost necessary to have service available for future customers.

As future customers requiring new connections come on line, they are required to pay service availability fees which may be capitalized, in whole or in part, as contributions-in-aid-of-construction.

“Contribution-in-aid-of-construction” means any amount or item of money, services, or property received by a utility, from any person or governmental authority, any portion of which is provided at no cost to the utility, which represents a donation or contribution to the capital of the utility, and which is used to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services.

In other words, “service availability fees” are used to develop excess capacity to insure that the service will be available *for future users of the utility*. Conversely, funds

generated from the fire user fee are used as a portion of the revenues budgeted by the city for providing fire services.

Thus, the fees are used to supplement the budget for the existing cost of running this service for the current users. Accordingly, the "Emergency Fire Service User Fee" is more properly characterized as a true user fee. In fact, a review of the legal opinions submitted to council both by the legal consultant hired in 2006 on this issue and my office have opined that the subject charge is a user fee.

This is an important distinction, because the School Board is not exempt from paying user fees on traditional utilities. *See, City of Clearwater v. School Board of Pinellas County*, 905 So.2d 1051 (Fla. 2nd DCA 2005). When discussing the "traditional utility" factor of the test set forth in *City of Gainesville v. State*, 863 So.2d 135, 145 (Fla. 2003) (which is used to determine whether a charge is a user fee or a special assessment), the legal consultant described the issue as follows:

While the term "traditional utility" is usually defined by examples such as the provision of electricity, natural gas, water, trash disposal and sewer services, an argument may be made that fire protection falls within this category of municipal services. Historically, fire departments were often private entities. To this day, volunteer fire departments still exist in smaller communities. Further, many cities and counties are served by independent fire control districts which are statutorily authorized to charge a variety of user and impact fees for the delivery of fire service. See Section 191.009, Florida Statutes. And, Fire service is distinguishable from police protection which is more properly categorized as a sovereign power for the administration of laws. Nevertheless, this factor is a closer call.

My research of the statutes and case law makes me believe that the fee is a valid user fee on what is arguably a traditional utility, and that the Marion County School Board would not be exempted from paying the fee.

On the other hand, as no appellate or attorney general opinions exist regarding fire services fees like the one proposed here, I want to make clear that any challenge to the fee would present a case of first impression in Florida. Another area of concern is the fee's original title as an "Emergency Fire Service Availability Fee." This is because the first factor listed in the *City of Gainesville* test is "the name given to the charge," although admittedly the test is utilized to determine whether a charge is a fee or a special assessment. As noted in the footnote, the name has been changed because the fee was never conceived as anything but a user fee and original naming it as such was clearly a scriveners' error.

If the City believes that further inquiry is necessary due to the ambiguity in the law, I would recommend either submitting the issue to the Attorney General's Office for review or seek an order for a declaratory decree in the Circuit Court.

Conclusion: The School Board is almost certainly exempt from paying the impact fee codified in Chapter 30, Article I of the City of Ocala Code of Ordinances and we should not impose that fee upon them. I believe, however, that the School Board is not exempt from the user fee codified in Chapter 30, Article III of the City of Ocala Code of Ordinances, but this remains an open question because our legal research has not identified a clear cut legal opinion issued by a Florida court on this issue.

TABLE OF AUTHORITIES

FLORIDA STATUTES

Florida Statute, §166.201
Florida Statute, §1013.371

CITY OF OCALA CODE OF ORDINANCES

Chapter 30, Article I, §§30-01 through 30-07
Chapter 30, Article III, §§30-50 through 30-53

CASE LAW

Florida Public Service Commission v. Florida Waterworks Association, 731 So.2d 836, 839 (Fla. 1st DCA 1999)
Rolling Oaks Utilities v. Florida Public Service Commission, 533 So.2d 770, 773 (Fla. 1st DCA 1988)
City of Clearwater v. School Board of Pinellas County, 905 So.2d 1051 (Fla. 2nd DCA 2005)
City of Gainesville v. State, 863 So.2d 138, 145 (Fla. 2003)

ADDITIONAL RESOURCES

06/21/06 Legal Opinion Letter from Lewis, Longman & Walker, P.A.
07/14/06 Legal Memorandum from the Office of the City Attorney

Sec. 70-686. Due date; delinquent accounts; payment of collection costs and attorney fees; creation of liens.

- (a) Utility bills shall become due and payable 20 days from the billing date and shall become delinquent accounts if not paid in full by the close of business on the 25th day after the billing date.
- (b) The owner and/or consumer of any premises supplied by electric, water, sewer, garbage collection, industrial waste and/or stormwater utility services by the city shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of charges, bills, accounts, liens and penalties imposed by virtue of this article.
- (c) A delinquent account, including electric, metered water supply, sewer, garbage collection, industrial waste collection and/or stormwater utility service, shall be discontinued and the electric and/or water supply shut off from and to the premises of the owner or consumer from whom such account is in arrears, in accordance with the provisions contained in section 70-691, regardless of the status of the owners' other accounts. A reconnection charge as specified in Schedule A to section 70-693 shall be assessed against such consumer or customer.
- (d) When an owner or consumer vacates or sells property leaving a delinquent bill against such property vacated or sold, the public works department may, at its option, refuse to provide any other service to the same owner or consumer for use in the future until the date the original delinquent account is paid, regardless of whether the other accounts of the owner or consumer are in good standing.
- (e) When electric, water, sewer, garbage collection, industrial waste collection and/or stormwater utility services are furnished to the owner or occupants of any premises, the charges for such services shall be and constitute a lien against the premises, and shall become effective and binding as such lien from the date upon which the account becomes due, unpaid and in arrears. Existing liens and liens imposed hereafter as set out in this subsection shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts. Such liens for service charges and penalties shall be enforced by any of the methods provided in F.S. ch. 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state law, or may be foreclosed per F.S. ch. 173; or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner and/or operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this article. The remedy provided in this subsection shall be cumulative and shall not be construed to waive the right of the city to require payment of any bill in arrears before renewing any services of the public works department to the premises in question.

(Ord. No. 6013, § 1, 9-1-09)

Editor's note—

Ord. No. 6013, § 1, adopted Sep. 1, 2009, amended § 70-686 in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 70-686 pertained to due date; delinquency date. See Code Comparative Table for derivation.

Sec. 70-687. Late payment charge and delinquent collection charge.

- (a) Utility bills will be subject to a late payment charge as established and periodically revised by city council by separate resolution on any amount unpaid on the account by the close of business on the 25th day after the billing date. Customers with a good payment history and an internal credit rating of at least 800 may request a one time waiver of a late fee annually, subject to approval by the city manager or designee.
- (b) Utility bills which remain unpaid for 90 days or more shall be referred to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to F.S. ch. 559. A collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent so retained shall be added to the balance owed, in an amount established and periodically revised by city council by separate resolution, but in any event not exceeding 40 percent of the amount owed at the time the account is referred to the attorney or agents for collection.

(Ord. No. 6011, § 2, 8-18-09; Ord. No. 6013, § 2, 9-1-09)

Editor's note—

Ord. No. 6011, § 2, adopted Aug. 18, 2009, repealed § 70-687 in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 70-687 pertained to late payment charge. See Code Comparative Table for derivation.

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Sec. 70-691. Discontinuance of service for nonpayment authorized.

Failure to pay a delinquent utilities bill within five days after the bill becomes delinquent shall be cause for the city to discontinue the furnishing of all service or such part thereof as may be ordered by the city manager.

(Code 1961, § 21-4; Code 1985, § 24-186; Ord. No. 5127, § 8, 1-27-03)



Sec. 70-693. Restoration of service following discontinuance for nonpayment.

- (a) After utility services are discontinued for nonpayment of a delinquent utility bill, service to the customer at the premises shall be restored only after payment of the delinquent unpaid bill in full, plus a reconnection charge, or pursuant to such terms as may be established by the city manager and documented pursuant to forms prepared by the city electric utility.
- (b) If satisfactory arrangements for restoration of service are made, the reconnection charge shall be as follows:
 - (1) During normal working hours (8:00 a.m. to 5:00 p.m.) as specified in Schedule A†.
 - (2) After normal working hours (evenings, weekends and holidays), the reconnection charge as stated in this subsection shall be two times that stated for normal working hours. After hours reconnects will be limited to two per calendar year. No after hour reconnects will be allowed for accounts that have been disconnected for a dishonored check.
 - (3) Any unauthorized reconnection or diversion of services will result in the discontinuance of service and a fine (as specified in Schedule A) will be imposed in addition to the appropriate reconnection charge. Service will not be restored until the total delinquent amount plus the fine is paid in cash, money order or certified check at the Customer Service Office during normal working hours. In the event of unauthorized reconnection or diversion of services, and damage is done to the service entrance or the utility's equipment, the customer will be responsible for all costs of repair and replacement of said equipment. Any cost incurred by the utility for repair or replacement will be added to the above fines and delinquent amount and must be paid before service will be restored. No after hours reconnection will be allowed when an unauthorized reconnection or diversion of services has been discovered.
- (c) A severance fee shall be assessed to all customers whose past due balance is not received in the Customer Service Office by 5:00 p.m. on the 30th day after the billing date.

(Code 1961, § 21-5; Code 1985, § 24-188; Ord. No. 2112, § 4, 9-26-89; Ord. No. 2784, § 23, 9-16-97; Ord. No. 5127, § 10, 1-27-03; Ord. No. 5702, § 19, 8-21-07; Ord. No. 6011, § 2, 8-18-09; Ord. No. 6013, § 3, 9-1-09; Ord. No. 2010-11, § 1, 11-17-09)

†Editor's note—Schedule A is not set out herein, but available as an attachment to Ord. No. 5702.

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*** FILED: MARION COUNTY, FL DAVID R. ELLSPERMANN, CLERK 12/19/2013 17:11:11.***

IN THE CIRCUIT COURT, OF THE
FIFTH JUDICIAL CIRCUIT, IN AND FOR
MARION COUNTY, FLORIDA

CITY OF OCALA,
a Florida municipal corporation,

Plaintiff,

v.

CASE NO: 2011-3112-CA-G

THE SCHOOL BOARD OF
MARION COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS SECOND
AMENDED COMPLAINT WITH PREJUDICE AND INCORPORATED
MEMORANDUM OF LAW**

Plaintiff, the City of Ocala, by and through its undersigned attorney, files this response in opposition to Defendant's Motion to Dismiss Second Amended Complaint with Prejudice and Incorporated Memorandum of Law. In support, the City of Ocala states:

1. The City of Ocala ("City") lawfully charges the School Board of Marion County ("School Board") fire user fees and stormwater fees related to the City's provision of emergency fire and stormwater services to Marion County schools. This litigation arises from the School Board's refusal to pay these fees.

2. On November 18, 2013, the City filed a Second Amended Complaint against the School Board of Marion County ("School Board"), alleging claims for Declaratory and Injunctive Relief (Counts I-II), Mandamus (Counts III-IV), Nuisance (Count V), Trespass (Counts VI), Violation of State and Federal Substantive Due Process (Counts VII¹ and VIII), Unjust Enrichment (Counts IX-X) and Inverse Condemnation (Count XI).

¹ This Count is mistakenly labeled "Count VIII" in the Second Amended Complaint.

3. On December 9, 2013, the School Board filed its Motion to Dismiss Second Amended Complaint with Prejudice and Incorporated Memorandum of Law. The School Board's brief is lengthy. However, it essentially asserts that the City's Second Amended Complaint should be dismissed, because:

The School Board has no legal obligation to pay either fire service fees or stormwater fees to the City because of sovereign immunity. There is no waiver of sovereign immunity in the case because there is no written contract between the City and the School Board, as is required under Gainesville III. The limited waiver of sovereign immunity under Florida Statutes §768.28 is inapplicable, because there is no common law duty for a landowner to pay fees to a governing body for collection of stormwater that runs off the landowner's property, there is no common law duty for the School Board to keep all of its stormwater on-site, and there is no common law duty to pay municipal fees such as fire service fees. Since there is no legal obligation on the part of the School Board to pay, there is nothing to enjoin or declare, nor are there any grounds for mandamus.

Sovereign immunity protects the School Board from claims for unjust enrichment, which are quasi-contract claims without a written contract. The payment or non-payment of utility fees or fire service fees do not implicate any fundamental rights, and are not violative of either state or federal due process. Finally, both entities in this case are public entities, so there is no cause of action for inverse condemnation.

(Motion to Dismiss, p. 30-31).

4. The School Board's motion to dismiss is presumably made pursuant to Florida Rule of Civil Procedure 1.140. In part, subsection (b) of this Rule provides that "[e]very defense in law or fact to a claim for relief in a pleading shall be asserted in the responsive pleading, if one is required," but then permits certain defenses, including "lack of jurisdiction over the subject matter" and "failure to state a cause of action" to be "made by motion at the option of the pleader." *See* Fla. R. Civ. P. 1.140(b).

5. The School Board is apparently arguing that sovereign immunity effects subject matter jurisdiction and is, thus, a basis for dismissal of Counts I-VI and IX-X. *See* Motion to Dismiss, pp. 6, 17, 21, 26.² Further, the School Board is apparently seeking dismissal of Counts VII, VIII, and XI based on the “failure to state a cause of action.” *See* Fla. R. Civ. P. 1.140(b).

6. “In order to determine the existence of a cause of action, the trial court must examine the complaint's allegations, taken as true, in light of the applicable substantive law.” *Vienneau v. Metro. Life Ins. Co.*, 548 So. 2d 856, 858 (Fla. 4th DCA 1989); *see also* *Wilson v. County of Orange*, 881 So. 2d 625, 629 (Fla. 5th DCA 2004) (“Examination must be limited to the four corners of the complaint and the allegations in the complaint must be taken as true and in the light most favorable to the pleader.”). Further, “[a] motion to dismiss under rule 1.140(b) tests whether the plaintiff has stated a cause of action, not whether the plaintiff will prevail at trial.” *See Lonestar Alternative Solution, Inc. v. Leview-Boymelgreen Soleil Developers, LLC.*, 10 So. 3d 1169, 1171 (Fla. 3d DCA 2009).

7. Further, to the extent it applies, sovereign immunity is generally considered an affirmative defense. *See Peak v. Outward Bound, Inc.*, 57 So. 3d 997, 999 (Fla. 2d DCA 2011); *see also* *Sierra v. Associated Marine Institutes, Inc.*, 850 So. 2d 582, 590 (Fla. 2d DCA 2003) (“[S]overeign immunity generally is an affirmative defense that may justify granting a motion to dismiss only when the complaint itself conclusively establishes its applicability.”); *Mancher v. Seminole Tribe of Florida, Inc.*, 708 So. 2d 327, 329 (Fla. 4th DCA 1998) (“The issue of whether sovereign immunity bars a complaint should likewise be addressed ‘by answer and affirmative defenses.’”).

² In its Motion, the School Board argues that “[t]his Court does not have subject matter jurisdiction to determine this cause because the School Board enjoys sovereign immunity with respect to payment of both types of fees, regardless of whether the City attempts to state causes of action in tort rather than in contract.” *See* Motion to Dismiss, p. 6.

8. Thus, the trial court should not grant dismissal based on sovereign immunity unless the “complaint itself conclusively establishes its applicability.” *See Sierra v. Associated Marine Institutes, Inc.*, 850 So. 2d 582, 590 (Fla. 2d DCA 2003); *see also Wilson v. County of Orange*, 881 So. 2d 625, 629 (Fla. 5th DCA 2004). (“Dismissal should not be granted on the basis of an affirmative defense, except when the face of the complaint is sufficient to demonstrate the existence of that defense.”).

9. Each count of the Second Amended Complaint alleges a cause of action. Further, as the authorities cited in the memorandum of law below demonstrate, none of these counts are barred by sovereign immunity.

10. Moreover, School Board’s argument that any or all of the Second Amended Complaint should be dismissed for lack of subject matter jurisdiction because of sovereign immunity is without merit. Sovereign immunity is an affirmative defense. The face of the Second Amended Complaint does not conclusively establish the applicability of sovereign immunity. Rather, the allegations of the Second Amended Complaint demonstrate that the defense is inapplicable.

MEMORANDUM OF LAW

Each count of the Second Amended Complaint alleges a cause of action. Further, as the authorities cited in the memorandum of law demonstrate, none of these counts are barred by sovereign immunity. School Board’s arguments for dismissal are without merit and must be rejected.

This memorandum addresses, in turn, the arguments which the School Board asserts with respect to each count of the Second Amended Complaint. *See Motion to Dismiss*, pp. 19-30.

A. Counts I-II: Declaratory Decree and Injunctive Relief – Fire User and Stormwater Fees

In Counts I and II of the Second Amended Complaint, the City seeks a declaratory decree regarding the School Board's obligation to pay fire user fees and stormwater fees imposed by City ordinances, as well as related supplemental relief. In *Meadows Cmty. Ass'n, Inc. v. Russell-Tutty*, 928 So. 2d 1276 (Fla. 2d DCA 2006), the Second District comprehensively laid out the law applicable to claims for declaratory relief. Specifically, in that case, the Second District explained:

Declaratory judgment actions are governed by chapter 86, Florida Statutes (2004), which provides that a party claiming to be interested or in doubt as to its rights under certain documents, including those involved in this case, may seek a declaration of its rights in the trial court. The elements of such a proceeding are set forth in *May v. Holley*, 59 So.2d 636, 639 (Fla.1952):

[I]t should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court ... and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

“The test for the sufficiency of a complaint for declaratory judgment is not whether the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a declaration of rights at all.” In other words, once a cause of action for declaratory relief is sufficiently pleaded, the plaintiff is entitled to a judicial determination of the rights at issue. The prospect that the determination may not lead to the relief sought by the plaintiff will not thwart the action. . . .

Id. at 1279-1280 (citation omitted); *see also* § 86.021, Fla. Stat. (“Any person . . . whose rights, status, or other equitable or legal relations are affected . . . by municipal ordinance . . . may have determined any question of construction or validity arising under such . . .

municipal ordinance, . . . or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.”)

In its Second Amended Complaint, the City has sufficiently pled its claims for declarative and injunctive relief. The School Board does not appear to dispute this point. Rather, the School Board’s arguments focus on the City’s entitlement to the relief it is claiming in the counts. Such arguments are not an appropriate basis for dismissal and must be rejected.

Specifically, with respect to Count I, the School Board asserts that the fire user fee ordinance is an availability fee rather than a user fee and that, as a result, the School Board is exempt from paying it by virtue of Florida Statute section 1013.371. *See* Motion to Dismiss, p. 17, 19-20. The obligation of the School Board to pay the fire user fee is precisely the issue the City is seeking to have the Court determine through Count I. Thus, the School Board’s arguments on this point are not a valid basis for dismissal of the Count. *See Meadows Cmty. Ass’n, Inc.*, 928 So. 2d at 1279-80 (“[O]nce a cause of action for declaratory relief is sufficiently pleaded, the plaintiff is entitled to a judicial determination of the rights at issue. The prospect that the determination may not lead to the relief sought by the plaintiff will not thwart the action.”).

The School Board’s argument with respect to Count II (stormwater fees) is not entirely clear. However, the School Board is apparently arguing that the Count should be dismissed, because the injunctive relief sought by the Count would put the School Board in an “impossible” position. *See* Motion to Dismiss, pp. 20-21. Specifically, the School Board claims that if it was put in this “impossible” position, it would have no choice but to pay the amounts it owes the City in fire user fees and that such a result would infringe upon its sovereign immunity. *Id.* In other words, the School Board is arguing that dismissal of the Count is warranted because award of the injunctive relief sought by the Count would force

the School Board to pay the fees which it is presently wrongfully refusing to pay based on claims of sovereign immunity.

The City will defer delving into the absurdity of the School Board's position until a more appropriate stage in this proceeding. At this time, it is sufficient to note that the School Board's arguments are entirely beside the point. The City's allegations establish its entitlement to declaratory relief. "The prospect that the determination" may or "may not lead to the relief sought by the plaintiff will not thwart the action." *See Meadows Cmty. Ass'n, Inc.*, 928 So. 2d at 1279-80.

Further, the School Board suggests that City's claims for declaratory and injunctive relief are barred by sovereign immunity. This argument is without merit and must be rejected. Sovereign immunity does not bar claims for nonmonetary relief. Thus, the defense is inapplicable to the City's claims for declaratory and injunctive relief. *See State Dept. of Highway Safety & Motor Vehicles v. Rendon*, 957 So. 2d 647, 652 (Fla. 3d DCA 2007).

B. Counts III and IV: Mandamus – Stormwater Fees and Fire User Fees

In Counts III and IV, the City seeks the issuance of writs of mandamus to compel the School Board to satisfy the stormwater and fire user fee liens on its property and an award of fees and costs pursuant to City Ordinance 70-686(e).

"A writ of mandamus is a common-law writ used to coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same." *State ex rel. Buckwalter v. City of Lakeland*, 112 Fla. 200, 206, 150 So. 508, 511 (1933). In order to be entitled to a writ of mandamus (1) the City must have a clear legal right, (2) the School Board must have a clear legal, ministerial duty to perform, and (3) the City must have no other adequate legal remedy available. *Tucker v. Ruvin*, 748 So. 2d 376, 377 (Fla. 3d DCA 2000); *see also Hatten v. State*, 561 So. 2d 562,

563 (Fla. 1990)(“For this Court to issue a writ of mandamus, Hatten must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.”).

The School Board asserts that the claims should be dismissed, because:

The City is simply attempting to litigate the issue of whether it is entitled to collect both stormwater and fire service fees, and not to obtain an order compelling this Court to enforce a right it clearly has a ministerial duty to perform. The City does not have a clear legal right to get payment from the School Board for fire service fees, nor does it have a clear legal right to get payment of stormwater fees. . . .

See Motion to Dismiss, p. 25.

The School Board’s argument is without merit. As the allegations of Counts III and IV amply demonstrate, the School Board has a clear legal right to the payment of the stormwater and fire user fees pursuant to the City’s ordinances. These ordinances provide for the City’s right to payment of these fees to be enforced by the imposition and foreclosure of liens. Further, the case law demonstrates that mandamus is available to enforce these lawfully imposed liens. *See Remington Cmty. Dev. Dist. v. Educ. Found. of Osceola, etc.*, 941 So. 2d 15, 18 (Fla. 5th DCA 2006).

Specifically, the stormwater utility service fees charged by the City are statutorily authorized user fees which School Board is not exempt from paying. *See* § 166.201, Fla. Stat.; *see also City of Gainesville v. State*, 863 So. 2d 138, 141 (Fla. 2003)³; § 403.0893, Fla. Stat.; *City of Clearwater v. Sch. Bd. of Pinellas County*, 905 So. 2d 1051, 1053 (Fla.

³ The School Board suggests that the holding in *City of Gainesville v. State*, 863 So. 2d 138, 141 (Fla. 2003) is inapplicable to it based on sections 1013.51 and 1013.371(1)(a). Specifically, the School Board claims that while section 1013.51 specifically authorizes School Boards to expend funds on stormwater improvements, section 1013.371(1)(a) exempts these entities from paying stormwater fees.

The School Board’s argument here is without merit. Section 1013.51 is titled “expenditures authorized for certain infrastructure.” Section 1013.371(1) is titled “(1) Conformity to Florida Building Code and Florida Fire Prevention Code required for approval.” These sections deal with the construction of infrastructure; not the liability of School Boards for user fees. The School Board is not exempt from paying stormwater fees.

2d DCA 2005). The City is permitted to enforce the receipt and collection of the stormwater utility services fees “in the manner prescribed by ordinance” *See* § 166.201, Fla. Stat. Pursuant to the City’s ordinances, the fees which the City charged School Board for stormwater utility services constitute a lien against School Board premises. *See* City Ordinance 70-686(e); *see also* *Stone v. Town of Mexico Beach*, 348 So. 2d 40, 42 (Fla. 1st DCA 1977) (Municipalities may impose a lien on real property for the failure to pay service charges.). The stormwater utility liens are then subject to foreclosure pursuant to City Ordinance 70-686(e). The collection and enforcement of payment related to the stormwater utility liens may also be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

Likewise, the emergency fire service fees are statutorily authorized user fees which the School Board is not exempt from paying. *See* §166.201, Fla. Stat.; City Ordinance 30-51. The City is permitted to enforce the receipt and collection of the emergency fire user fees “in the manner prescribed by ordinance” *See* § 166.201, Fla. Stat. Pursuant to the City’s ordinances, the fees which City charged School Board for emergency fire services constitute a lien against School Board premises. *See* City Ordinance 30-53; City Ordinance 70-686; *Stone*, 348 So. 2d at 42 (Municipalities may impose a lien on real property for the failure to pay service charges.). The fire user fee liens are then subject to foreclosure pursuant to City Ordinance 70-686(e). The collection and enforcement of payment related to the fire user fee liens may also be accomplished by any method authorized by law. *See* City Ordinance 70-686(e).

In sum, in Counts III and IV, the City has alleged each element required for issuance of a writ of mandamus, including a clear legal right. Specifically, the School Board has a clear legal right to the payment of the stormwater and fire user fees pursuant to the City’s

ordinances, which provide for this right to be enforced by the imposition and foreclosure of liens. Furthermore, this right may be enforced by mandamus. *See Remington Cmty. Dev. Dist.*, 941 So. 2d at 18. Accordingly, the School Board's argument for dismissal should be rejected. *See Lonestar Alternative Solution, Inc. v. Leview-Boymelgreen Soleil Developers, LLC.*, 10 So. 3d 1169, 1171 (Fla. 3d DCA 2009) ("A motion to dismiss under rule 1.140(b) tests whether the plaintiff has stated a cause of action, not whether the plaintiff will prevail at trial.").

Finally, while in some circumstances sovereign immunity bars an action at law to collect damages, it has never operated to prevent officials from executing their required duties. Rather, it is by its very nature a tool designed to "coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same." *State ex rel. Buckwalter v. City of Lakeland*, 112 Fla. 200, 206, 150 So. 508, 511 (1933).

C. Counts V: Nuisance

In Count V of its Second Amended Complaint, the City alleges a claim for nuisance based on the School Board's disposal "of its stormwater onto City's property and into City's stormwater system without permission and without payment of the utility fee." *See* Second Amended Complaint, para. 65. Furthermore, in this Count, the City specifically alleges:

70. School Board's use of its property results in an **improper diversion** of surface water onto City's property. Sovereign immunity does not protect School Board's use of its property in this manner. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207, 209 (Fla. 5th DCA 1997)

See Second Amended Complaint, Count V (emphasis added).

The School Board's argument here is unclear. However, it appears that the School Board is arguing that the nuisance alleged by Count V is the non-payment of fees. Based on that premise, the School Board appears to be asserting that Count V should be dismissed because it is protected from the payment of stormwater fees by sovereign immunity. Further, it argues that the non-payment of fees is not an "injury" for purposes of establishing a nuisance claim.

School Board's argument is without merit. It is clear from the allegations of the Second Amended Complaint that the nuisance claimed by the City is not the non-payment of fees, but, rather, the School Board's improper disposal of its stormwater onto City property. It is undisputed that such injury may form the basis of a nuisance claim. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207 (Fla. 5th DCA 1997); *Dep't of Transp. v. Burnette*, 384 So. 2d 916, 922 (Fla. 1st DCA 1980). Indeed, the School Board acknowledges in its motion the existence of "tort cases involving claims of nuisance or trespass regarding surface water" where the "surface water has been improperly diverted." *See* Motion to Dismiss, p. 8. Contrary to the School Board's representations in its motion, these cases are applicable here, as the City has alleged improper diversion of surface water in paragraph 70 of the Second Amended Complaint.

Finally, the case law demonstrates that neither nuisance nor trespass claims are barred by sovereign immunity. As discussed by the Fifth District Court of Appeal in *Mayday's Wholesale Greenhouses, Inc.*, 692 So. 2d at 209:

On appeal, Maday . . . argues that the manner in which Port Orange is using its own property constitutes an unlawful diversion of surface water, representing a continuing trespass and nuisance. Maday argues that, in the event that its factual allegations are sustained, it would be entitled at the very least, to injunctive relief. It contends that a governmental property owner does not enjoy sovereign immunity as against a claim that the government's use of its own property results in an

improper diversion of surface water onto private property. We agree.

(Emphasis added). *See also Dep't of Transp. v. Burnette*, 384 So. 2d 916, 922 (Fla. 1st DCA 1980) (Sovereign immunity does not bar an action seeking to enjoin the State from gathering surface waters and diverting such water to the lands of a lower owner to that owner's injury.).

D. Count VI: Trespass

“A simple definition of a civil trespass to real property is an injury to or use of the land of another by one having no right or authority.” *Winselmann v. Reynolds*, 690 So. 2d 1325, 1327 (Fla. 3d DCA 1997). In Count VI, City alleges that the School Board disposed of stormwater onto the City's property and into the City's utility system without authority and to the City's detriment. *See* Second Amended Complaint, paras. 74-75. Accordingly, the City has properly alleged the elements of its trespass claim.

Nonetheless, School Board argues that this count should be dismissed both because the City has a common law obligation to accept the School Board's runoff where improper diversion of the surface water is not an issue, and because the City has a statutory responsibility, pursuant to section 403.0891, Florida Statutes, to collect stormwater run-off from properties within its boundaries.

In Count VI, the City has alleged an improper diversion of surface water. As discussed with respect to Count V, the City has no obligation to accept improperly diverted stormwater. Such diversion is a basis for a trespass claim. *See Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, 692 So. 2d 207 (Fla. 5th DCA 1997); *see also Dep't of Transp. v. Burnette*, 384 So. 2d 916, 922 (Fla. 1st DCA 1980) (No person has the right to gather surface waters naturally flowing in one direction and divert such water onto the lands of a lower owner to that owner's injury.). Furthermore, nothing in section 403.0891 requires the City to accept the School Board's stormwater without payment.

Finally, as discussed in the previous section, neither nuisance nor trespass claims are barred by sovereign immunity. *See Mayday's Wholesale Greenhouses, Inc.*, 692 So. 2d at 209; *see also Dep't of Transp. v. Burnette*, 384 So. 2d 916, 922 (Fla. 1st DCA 1980) (Sovereign immunity does not bar an action seeking to enjoin the state from gathering surface waters and diverting such water to the lands of a lower owner to that owner's injury.).

E. Counts VII and VIII: Violations of State and Federal Due Process

In Counts VII and VIII of its Second Amended Complaint, the City alleges claims for violation of its substantive due process rights under the Florida and United States constitutions. Specifically, as explained in the complaint, the City owns, operates, and maintains the stormwater utility system which is adjacent to School Board's properties pursuant to its proprietary and corporate powers. Because the City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

Article I, section 9 of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law" Further, the Fourteenth Amendment of the United States Constitution, section 1, provides: "No State shall ... deprive any person of life, liberty, or property, without due process of law. . . ."

By using City's stormwater utility system without paying the statutorily authorized user fee required for access, School Board has deprived City of a property interest or right without due process of law. The property interest or right that City asserts here, i.e. the right to exclude others from using its property, is fundamental and deeply rooted in the history and tradition of this Nation.

In its motion to dismiss, School Board mischaracterizes the nature of the City's claim by suggesting that the property right at issue is in stormwater payments. The School Board

then concludes that these counts should be dismissed because there is "no constitutionally protected right of the City to collect stormwater utility fees from another public entity unless there is a written contract waiving sovereign immunity." *See* Motion to Dismiss, pp. 28-29.

The property rights that the City asserts in the due process counts are the rights to exclude the School Board from using its stormwater utility system and to charge the School Board for use of its stormwater utility system. Such property rights are fundamental and deeply rooted in the history and tradition of this Nation. *See State Rd. Dept. of Florida v. Tharp*, 146 Fla. 745, 749 (1941) ("If American democracy survives and lives up to the function of its creation, it must do so by adherence to the code of moral and legal conduct promulgated by the Constitution, one provision of which is the sanctity of private property."). Further, in *Gulf Power Co. v. Bevis*, 289 So. 2d 401, 403 n. 1 (Fla. 1974), the Supreme Court of Florida noted:

A regulated public utility is, of course, entitled to an opportunity to earn a fair rate of return on its invested capital. *City of Miami v. Florida Public Service Commission*, 208 So.2d 249 (Fla.1968). **Failure to allow the utility the opportunity to earn a fair rate of return would violate the rights to due process, to just compensation for taking of property and the right to possess and protect property.** Fla.Const., Art. I, ss 2, 9; Art. X, s 6, F.S.A.; U.S.Const. Amends. V and XIV.

(Emphasis added).

Finally, School Board's action is illegal and violates City's constitutional rights. Sovereign immunity has no application in these circumstances. *See Tharp*, 146 Fla. at 749 ("If a State agency can deliberately trespass on and destroy the property of the citizen in the manner shown to have been done here and then be relieved from making restitution on the plea of nonliability of the State for suit, then the constitutional guaranty of the right to own and dispose of property becomes nothing more than the tinkling of empty words."); *see also Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

F. Counts IX and X: Unjust Enrichment– Stormwater Fees and Fire User Fees

Further, the City has alleged claims for unjust enrichment in Counts IX and X of its Second Amended Complaint based on the School Board's conduct in taking advantage of City services while refusing to pay for them. *See* Second Amended Complaint, pp. 15-18. "The elements of a cause of action for unjust enrichment are: (1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff." *Hillman Const. Corp. v. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994). The City's unjust enrichment counts sufficiently plead these elements.

Nonetheless, the School Board claims that the Unjust Enrichment Counts must be dismissed because they sound in quasi-contract. Specifically, the School Board argues that because there is no waiver of sovereign immunity for quasi-contract claims, these counts are barred by sovereign immunity.

The School Board's conduct in continuing to take advantage of City stormwater services while refusing to make payment is inequitable and unlawful. Sovereign immunity does not apply to shield School Board's such conduct. *State Road Dept. of Florida v. Tharp*, 146 Fla. 745 (1941) ("To deprive the citizen of his property by other than legal processes and depend on escape from the consequences under cover of the plea of nonsuability of the State is too anomalous and out of step with the spirit and letter of the law to claim protection under the Constitution."); *see also Interair Services, Inc. v. Insurance Co. of North America*, 375 So.2d 317 (1979).

Regardless, as previously discussed, sovereign immunity is an affirmative defense. As the Second Amended Complaint fails to conclusively establish that sovereign immunity, to the extent it is applicable, has not been waived, the defense is not an appropriate basis for

dismissal of these counts. *See Wilson v. County of Orange*, 881 So. 2d 625, 629 (Fla. 5th DCA 2004). (“Dismissal should not be granted on the basis of an affirmative defense, except when the face of the complaint is sufficient to demonstrate the existence of that defense.”).

G. Count XI: Inverse Condemnation

Finally, in Count XI of its Second Amended Complaint, the City alleges a claim under Florida’s Constitution to recover compensation for the School Board’s taking of easements on City property for stormwater drainage purposes.

As previously discussed, pursuant to Article VIII, section 2(b) of the Florida Constitution, the City has both corporate and proprietary powers. Pursuant to its proprietary and corporate powers, the City owns, operates, and maintains the stormwater utility system which is adjacent to School Board’s properties. Because the City is acting in its proprietary corporate capacity in providing stormwater utility services, it is governed by the same laws and may exercise the same rights of a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929).

School Board’s diversion of stormwater onto City’s property constitutes a physical invasion of City property and the taking of easements on City property. *See Drake v. Walton County*, 6 So. 3d 717, 720 (Fla. 1st DCA 2009) (“Government cannot choose to act and protect one property owner by diverting floodwater onto the property of another without compensating that property owner.”).

In its motion, the School Board argues that the City’s inverse condemnation claim should be dismissed because, the constitutional provisions regarding takings only concern the taking of private property. Specifically, the School Board asserts that “[i]t is fundamental that the property being taken is private property, and the entity taking the property be a public

entity. It is not applicable to a disagreement between two public entities over payment of a bill for certain 'utility' services." *See* Motion to Dismiss, p. 30.

The School Board's argument is without merit. In providing stormwater utility services, the City is governed by the same laws and may exercise the same rights as a private corporation engaged in a similar undertaking. *See Hamler v. City of Jacksonville*, 97 Fla. 807, 810 (1929). Accordingly, Article X, section 6(b) of the Florida Constitution protects the property rights of the City in this circumstance as much as it does the rights of any private landowner.

WHEREFORE, the City of Ocala requests that this Court enter an order denying Defendant's Motion to Dismiss Second Amended Complaint in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-mail to: Defendant's attorneys, Susan Seigle, Esquire, of Dell Graham, P.A.; sseigle@dellgraham.com; dburch@dellgraham.com; sdanel@dellgraham.com and Beverly A. Morris, Esquire; beverlymorris@earthlink.net; beverlymorrislegalasst1@earthlink.net, this 19th day of December, 2013.

GILLIGAN, GOODING & FRANJOLA, P.A.

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December 3, 2013

Via E-mail pgilligan@ocalalaw.com and U.S. Mail

Patrick G. Gilligan
City Attorney for City of Ocala
Gilligan, King & Gooding, P.A.
1531 SE 36th Ave.
Ocala, FL 34471

Re: Public Records Request and Demand for Refund

Dear Mr. Gilligan:

We have the pleasure of representing Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and a putative class of all other City of Ocala water utility customers who have paid fire user fees as part of their water bill. Pursuant to Florida Statutes Chapter 119 I request from the City of Ocala (hereinafter "City") the following public records:

1. A certified copy of Ordinance 5554, Ordinance 5677, Ordinance 6015, and Ordinance 2010-43.
2. Copies of each water bill sent to our client from the inception date of Ordinance 5554, as codified in Chapter 30, Article III of the City's Code of Ordinances (hereinafter "Ordinance"), through the most recent billing cycle.
3. A certified copy of our client's water bills that cover the following service dates: January 2007, January 2008, January 2009, January 2010, January 2011, January 2012, and January 2013.
4. A certified copy of the City's standard water bill template, as currently used by the City to bill water customers for fire user fees pursuant to the Ordinance and any amendments thereto, and each previous version of the template used for the same purpose from the inception date of the Ordinance through the latest template revision.

EXHIBIT
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5. A certified copy of the City's standard late notice template, as currently used by the City to notify water customers that payment of their water bill is overdue, and each previous version of the template used for the same purpose from the inception date of the Ordinance through the most recent template revision.
6. A certified copy of the City's Council work session minutes dated May 23, 2006.
7. A certified copy of the City's Council meeting minutes dated June 6, 2006.
8. A certified copy of the City's Council meeting minutes dated August 8, 2006.
9. A certified copy of the City's Council work session minutes dated August 9, 2006.
10. A certified copy of the City's Council meeting minutes and work session minutes dated October 6, 2009.
11. A certified copy of the City's Council meeting minutes dated November 16, 2010.
12. A certified copy of the City's Council meeting minutes and work session minutes dated March 15, 2011.

Please let us know the cost for providing these documents. If it would be easier for the City Records Custodian to provide these documents electronically or place them on a CD, either option would also be acceptable.

We also hereby demand that the City rescind the Ordinance, and any amendments thereto, and refund all fire user fees paid by the putative class within 45 days of the date of this letter, otherwise we will file a lawsuit against the City. Alternatively, our client is willing to submit this dispute to pre-suit mediation in an effort to avoid the time and expense of litigation.

Should you have any questions or comments, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lennon E. Bowen, III". The signature is stylized with a large, looping "L" and "B".

Lennon E. Bowen, III