

CITY OF CLEWISTON
Regular Commission Meeting
February 20, 2012

The City of Clewiston City Commission held its regular Commission meeting in the City Hall Commission Chambers Monday, February 20, 2012. The meeting was called to order at 6:00 p.m. by Mayor Richard Miller. Pastor John Hicks gave the invocation and the audience recited the Pledge of Allegiance.

Attendance:

Commissioners Present: Mayor Richard Miller, Commissioner Mali Gardner, Commissioner Joseph Miller, Commissioner James Pittman and Commissioner Julio Rodriguez.

Personnel Present: City Manager Steve McKown, Finance Director Ted Byrd, Police Chief Don Gutshall, Utilities Director Kevin McCarthy, City Clerk Marilyn McCorvey, City Engineer Tommy Perry, Recreation Director Lance Ramer, Community Development Director Travis Reese, Public Works Director Sean Scheffler, Library Director Eric Tommerdahl, City Attorney Charles Schoech, Fire Chief Rob Hunton, and Karen Moore.

Visitors Present: Nenette Aker, Jeff Barwick, Jerry Cochrane, Terry Gardner, Denise Hatton, John Hicks, Christine Howell, Ellie Hough, Diana Hughes, Donald Hughes, Mary Lois Lee, Pepe Lopez, Reva Marshall, Melanie McGahee, Amy McKown, Lisa Miller, Kurt Owen, Paula Pittman, Valentin Rodriguez, Lorina Scheffler, Francis Spry, Matt Stanton, Teresa Stanton, Tish Swangler, and Joanne Wilson.

ADDITIONS/DELETIONS/CHANGES AND APPROVAL OF THE AGENDA – Mayor Miller asked that Item 6 – Discussion on Scott Martin Challenge be discussed as the first item and Commissioner Gardner asked that the Legal Decision City Attorney Schoech rendered be added as Item 8.1.

Commissioner Gardner stated that in December the City Manager evaluations were done and she has posed some questions because she has concerns and would like to clarify some things and make certain the Commission understands her concerns. Commissioner Gardner reiterated that she had concerns about the clothing allowance given to directors and office staff as it had been specifically taken out of the budget. She stated that she has the 2009 budget minutes where the Commission agreed that office staff should not receive a uniform allowance. Commissioner Rodriguez stated that was his understanding. Commissioner Joseph Miller stated that the Commission set a policy before City Manager McKown arrived here and when he found out about the allowances he informed Mr. McKown of his displeasure. Mayor Miller agreed with Commissioner Miller and thought that Mr. McKown knew the allowances had been taken out of the budget and he should have brought this to the attention of the Commission. Commissioner Gardner stated that if Mr. McKown was not a CPA he might not understand the budget, but that line item does not exist. Commissioner Pittman asked if the City Manager has the latitude to have a clothing allowance reinstated even if it had been taken out of the budget previously. Commissioner Gardner felt that employee benefits are set by the Commission. City Attorney Schoech stated that the City Manager has wide latitude in his authority. Mr. Schoech stated he can give employees a raise in the middle of the year as long as it is within their pay grade and he has the ability to give a clothing allowance. Mr. Schoech stated that since it had previously been taken out of the budget and there was no discussion on the matter in 2011-12, it would have been prudent for him to discuss it with the Commission. Commissioner Gardner stated the allowances were an employee benefit which was not a budgeted item, but the City Manager brought to the Commission an unbudgeted item of Christmas tokens for approval. Commissioner Gardner stated these were two unbudgeted items which she feels are employee benefits, and one was brought to the Commission for approval and one was not. She believes the giving of the clothing allowance was an inappropriate action on his part by not letting the Commission know about it.

Commissioner Gardner's next concern was the transfer of funds for the recreation budget which was 21% over budget. Commissioner Gardner stated that she feels the need for transparency and accountability, and any transfer of appropriations should be brought to the City Commission for approval and she has a concern when \$168,000 is transferred without the Commission being aware of it. City Attorney Schoech read a portion of the City Charter regarding transfers and stated that it made no sense. He stated the typical authority of city managers is the ability to do budget

transfers but not budget amendments. State Statute dictates that cities cannot have over budget line items and in the past, the auditor has made transfers. City Attorney Schoech stated there is a mis-statement in our Charter regarding subsection F. Commissioner Gardner stated that even though there may be mis-statements in the Charter, she believes the intent was that transfers come to the Commission for approval. City Attorney Schoech stated that the City Manager has the authority to make budget transfers, however the Commission can require that any transfers be brought to them for approval. Commissioner Gardner stated her concern is there is no transparency with the City budget on transfers. Commissioner Rodriguez stated that Recreation was over budget and the transfer of funds without Commission approval is unacceptable. He feels the transfers could be seen as wasteful spending and as a courtesy should be brought to the Commission. Commissioner Rodriguez stated that a partnership with the City Manager and the Commission is needed to run the City. Commissioner Joseph Miller stated that we have had transfers to balance line item budgets for years and the auditor is usually allowed to make the transfers. Commissioner Miller felt the Commission should be made aware of everything in the City and that some clear definitions need to be implemented. Finance Director Ted Byrd remarked that multiple transfers have been made every year for the past ten years. The transfers are made for a variety of reasons but some entities do have stricter rules for transfers. Mr. Schoech stated that clearly the key is communication and if the Commission wants all transfers to come to them, they can require that. However, budget transfers have to be made in accordance with Florida law. Commissioner Pittman stated that transfers happen in government accounting. He stated the bigger problem to him is the amount of the Recreation transfer without the Commission being informed. Commissioner Rodriguez stated that some of the information that City Attorney Schoech was giving was in a gray area and he should give them the facts and let the Commission make the decisions. City Attorney Schoech stated he was giving the Commission the legal advice to give them the ability to make decisions, set policy, and change the way things are currently being done. Mayor Miller stated that he believes Mr. Schoech's advice has been spot on and he has given the Commission the legal advice to make decisions, but it is up to the Commission to understand and make the appropriate decision. Commissioner Gardner felt that when a line item extends over a certain percentage, the Commission should be informed and it concerns her that they are not.

Commissioner Gardner stated that in November and December she heard that the City Manager drove his City vehicle to the Tiki Bar. In December she asked the City Attorney to review the report to see if any City policies were violated. City Attorney Schoech has stated that the incident was a personal issue and not related to the City and that is what the City Manager had told him. Commissioner Gardner stated that she has a problem because in December, the City Manager stated the reason he drove the City vehicle to the Tiki Bar was that he was on City business. After she saw the Facebook posting and the newspaper, she was very concerned because everyone, except the City Commission, knew that the State Attorney had recommended that the City adopt a policy to have safeguards and procedures in place. Commissioner Gardner stated she is concerned that she had to get her information from the press. City Attorney Schoech stated he did not realize that it was his responsibility to inform the City of the State Attorney's recommendation. Commissioner Rodriguez stated he does not know what happened at the Tiki Bar, but that the Commission had been asking for the report for weeks and the newspaper seemed to get it in one day. Commissioner Rodriguez stated that he felt the City Manager had been demonstrating a pattern of traffic stops, etc. and that he had crossed the line. The Commission discussed the alleged incident of the City Manager turning on his white lights to pull over a vehicle. Chief Gutshall stated there was nothing criminal about the lights incident but when asked about any past incidents by FDLE, that came to mind. Commissioner Rodriguez stated that he wanted to see Mr. McKown in a city manager friendly vehicle that does not have lights or anything else that might make it look like a police vehicle. Commissioner Joseph Miller stated we need to look at every City policy and get them more focused so employees know what is expected. Commissioner Miller felt there are misrepresentations in the report and we need to focus on policies that take all interpretation out and makes the Commission's wishes known. Commissioner Pittman stated he agrees that we need detailed policies. He stated that he was concerned about the report and he did find some inconsistencies in the report by calling some people. Commissioner Pittman stated he called Justin Spence and asked him if he had been interviewed by FDLE and he said yes, but that interview was not in the report. Commissioner Pittman stated the report was a prosecutor trying to prosecute someone for something they did not do. Commissioner Gardner stated she asked if City policy was violated in the incident and she still does not know if violations occurred. Commissioner Gardner stated that when the State Attorney recommends something to the City, the City should look at it and she thinks that we need to look at a vehicle policy.

Valentin Rodriguez came forward to speak as the City Manager's attorney. Mr. Rodriguez stated it took several weeks for the FDLE investigator to get back to them on the details of the allegation and eventually it went to the State Attorney's office. Mr. Rodriguez stated they did not contact him or give him any facts of who was interviewed, but Mr. McKown gave them a list of witnesses. He stated interviews are missing and it is a one-sided report. Mr. Rodriguez felt the purpose of the investigation was to have Mr. McKown arrested. Mr. Rodriguez stated that there was no criminal intent to commit a crime and their stance is that Mr. McKown did not do anything wrong. Mr. Rodriguez stated it is not unusual for the City Manager or City officials to have a badge for identification purposes. Commissioner Rodriguez asked how the theory that this was a plot against Mr. McKown was established. Mr. Rodriguez stated the report left out important facts and he is concerned that the Police Department was part of the interviews and that one of the officers was related to one of the witnesses. Commissioner Gardner stated a criminal attorney coming to the Commission to talk about the actions or non-actions of the City Manager is extremely disconcerting. Mayor Miller stated this investigation could have gone to other agencies for investigation, but it was sent to FDLE. Mr. Rodriguez stated it was his opinion that the case should have gone to the county sheriff. Commissioner Gardner stated that FDLE is a State agency and she will stand for the work they do and someone might think the report is one sided because you are protecting your client but the State of Florida has very strict guidelines with the Department of Law Enforcement. Mayor Miller stated that the incident has been investigated with nothing covered up and no charges have been filed.

Melanie McGahee came forward to speak. Ms. McGahee stated the FDLE was contacted because the City Manager is the boss of the police and that was the right thing to do. Ms. McGahee stated she requested the report from the State Attorney, paid \$8.70 and received the report the next day. She stated the report was available on July 12, 2011. Ms. McGahee stated she did not feel the report was one-sided and she felt the Commission was parroting what Mr. McKown told them. Ms. McGahee questioned the Commission as to whether they had actually spoken to any of the witnesses. Ms. McGahee stated the fact remains that Mr. McKown impersonated a police officer; he got a badge, a police radio and she thought he identified himself as an officer in front of hundreds of people. She stated she called Mr. Willows of FDLE and asked why he did not interview the five witnesses Mr. McKown said he gave them and he told her that no such list was given to him. Ms. McGahee stated that she called the Mayor and offered to give the names of the witnesses to FDLE or she would go with him and talk to FDLE and it concerns her that they have put blinders on about something that is so serious. Ms. McGahee does not feel that the City Manager should have a badge, police radio, nor a vehicle that looks like a police vehicle. Mayor Miller stated it is not against the law to have a badge or lights in a vehicle. She stated to read the report and believe there is no problem troubles her.

Commissioner Gardner's other concern was the use of the City credit card for personal purchases. She stated that the City Manager is the leader and sets the tone for City employees. Commissioner Gardner stated that Mr. McKown did reimburse the City but he was the only one that took advantage of the City credit card. She felt it was very disconcerting that the City was going to have to implement 3 or 4 new policies to reign in the City Manager. Commissioner Gardner stated when she started bringing up issues, she knew some people might get upset with her, but public meetings are the only avenue the Commission has to speak together. Commissioner Gardner stated that in the council/manager form of government, the council sets the policies and the manager executes them. She stated the Commission has set policies and they have been disregarded. Commissioner Gardner brought up the City's merit raises and stated the amount the Commission approved was exceeded by 21%. Commissioner Rodriguez stated that the points Commissioner Gardner was making were legitimate problems. He felt the over budget and over spending is inexcusable. Commissioner Rodriguez stated we can't turn our backs on the problems as the Commission has to be accountable to the taxpayers who trust them and some explanations are needed. He stated that his opinion is that the City has a lot of wasteful spending. Commissioner Joseph Miller stated that when the City hired Mr. McKown it was known that he had not been a City Manager before. He stated we have had some growing pains since Mr. McKown has been here and anybody that runs a business knows that the person you hire may not make the same decisions that you would. Commissioner Miller stated he thought it was the Commissioners' responsibility to discuss the City Manager's decisions with him and let him know their thoughts on matters. Commissioner Gardner stated the organizational chart of the City shows the Commission is over the City Manager and the Commission sets the benefits of the employees. Commissioner Joseph Miller stated that Mr. McKown did not violate a policy but we need to make policies more clear. Commissioner Gardner stated clearing up policies because of one person is a problem.

Utilities Director McCarthy came forward to speak. Mr. McCarthy stated that he felt people thought he received something he was not entitled to regarding his “bonus”, and that meant he was a thief, or that was how he looked at it. He said he would give the bonus back, and most of the directors would give the clothing allowance back if it would be the end of it. Mr. McCarthy stated that he had previously been on the City Commission for six years and functionally the City has not changed. He stated from 2003 to 2007, we had line item transfers. He quoted various overages in the past that were as large as the one being discussed. Mr. McCarthy stated that Finance Director Byrd was accused of misuse of funds and nobody came to ask him about it and the answer was simple, if anyone had asked. Mr. McCarthy stated the “bonus” given to him instead of a raise actually cost him. Commissioner Rodriguez asked why the raise was not given the traditional way as he doesn’t have a problem with the raise, just the way it was done. Commissioner Rodriguez stated the Commission was not told that some key employees were topped out. Commissioner Gardner stated she is very sorry about what happened to Mr. McCarthy, but we are not keeping up when the law changes and the City Manager is responsible for this problem. She also stated that she felt Mr. McCarthy was worth every cent he is paid and the Commission would have done what needed to be done. Mr. McCarthy spoke on the need for the police band radios and further stated that if the Commission wants to separate the Police Department and not allow anyone to speak to them, take them away from everyone. Mr. McCarthy stated the investigation started at the Tiki Bar and has moved on to police radios and vehicles. The City Manager’s vehicle has white strobe lights, not blue lights just like our utility vehicles have. Mr. McCarthy stated that staff cares about the City and we try to spend the money wisely but we have exceeded line items every year. Commissioner Gardner stated that she has been on the Commission for 12 years and she hopes the employees know her heart but when it gets to the point so much gets stacked up, she has to say something. There is a lot of information she is concerned with because of her love for the City and the employees. Mr. McCarthy stated he felt her heart is in the right place, but the budget has not been done differently this year.

Jerry Cochrane came forward to speak. Mr. Cochrane stated that Commissioner Gardner may have lost a few friends but also picked up some. Mr. Cochrane asked where the funds for the clothing allowance came from. He stated when the line item was taken out, it should not have been put back in without Commission approval. Mr. Cochrane stated he doesn’t have a problem with the allowances, but it is wrong that the Commission did not approve it. He felt the use of the credit card by the City Manager was a bad message to send to the employees and citizens. Mr. Cochrane stated that there is not a problem with the transfers, but they should have been reported to the Commission. He thought the City might want to consider going away from raises based on evaluations because supervisors can play enormous games with merit raises. Mr. Cochrane stated that people want transparent government.

Morris Ridgdill came forward to speak. Mr. Ridgdill stated he was the mayor of Clewiston in 1978 and 1979 and he wants to say one thing. He stated that until the whole Commission gets together and works together, we don’t have a Commission. Mr. Ridgdill stated there are big decisions to be made and what is best for the community is what the citizens want you to do. He stated he heard some things that need correcting, so change the policy and make it work. Mr. Ridgdill stated everybody has to work together and we have the best community and the best City anywhere.

Phillip Roland came forward to speak. Mr. Roland stated he spent 20 years as a county commissioner and sees what’s going on. He stated he believes we need to go back to when the Commissioners were more involved instead of one person running the City.

1. Consent Agenda

- A. *City Commission Workshop Minutes – January 19, 2012*
- B. *City Commission Regular Meeting Minutes – January 23, 2012*
- C. *Clewiston Waterfront Workshop Minutes – January 19, 2012*
- D. *Sugar Festival Event Application*

Commissioner Pittman made a motion, seconded by Commissioner Gardner, to approve the Consent Agenda. Vote 5 yeas, 0 nays.

MISCELLANEOUS ACTION AND DISCUSSION ITEMS

2. **Department of Economic Opportunity – CDBG Grant Administration Services Bid Award** – The City advertised for CDBG grant administration services in the Clewiston News and the Palm Beach Post on January 12, 2012. A selection committee comprised of City Clerk Marilyn McCorvey, Finance Director Ted Byrd and Community Development Director Travis Reese reviewed the five bids and completed the ranking sheets. Nancy Phillips & Associates was the overall choice for the bid award.

Commissioner Gardner made a motion, seconded by Commissioner Pittman, to award the CDBG Grant Administration Services Bid to Nancy Phillips and Associates in an amount not to exceed \$95,000. Vote 5 years, 0 nays.

3. **Participating Party Agreement Between All Juices and Beverages, LLC and the City of Clewiston Approval** – This PPA is needed to satisfy the requirements of the infrastructure grant at the Clewiston Commerce Park. City Attorney Schoech has reviewed the agreement.

Commissioner Gardner made a motion, seconded by Commissioner Rodriguez, to table this item and set up a Special Meeting as soon as possible. Vote 5 years, 0 nays.

4. **Redirection of Funds Earmarked for commercial Energy Audits** – Utilities Director McCarthy is requesting that approximately \$50,000 of the grant funds that were earmarked for Commercial Energy Audits be used for replacing street lights with LED's. The State will allow this conversion of the funds and City crews will install the LED's if the request is approved.

Commissioner Gardner made a motion, seconded by Commissioner Pittman, to approve the conversion of the remaining Commercial Energy Audit Grant Funds (approximately \$50,000) to LED street light replacements. Vote 5 years, 0 nays.

5. **Sugar Appreciation Week Proclamation** – The City has traditionally issued a proclamation for Sugar Appreciation Week which is used in the Sugar Festival Guide. They have once again asked for such a proclamation.

Commissioner Gardner made a motion, seconded by Commissioner Rodriguez, to approve the Sugar Appreciation Week Proclamation. Vote 5 years, 0 nays.

6. **Scott Martin Challenge Funding** – This item was tabled at the January 23, 2012 meeting when the Commission asked for additional information. We have received additional information from Scott Martin regarding the proposal which is enclosed under Agenda Item Report 6.

Scott Martin came forward to speak on this matter. Mr. Martin showed clips from his show, plus the LORI ad. Mr. Martin stated he is trying to build our reputation as a great place to come and fish. The value of the package he is making available to the City is worth 3 or 4 times more than what he is charging. Mr. Martin stated that over a million people per week view the Scott Martin Challenge Show.

The Commission discussed the funding and complimented Mr. Martin on his efforts to showcase our area. The Commission agreed that we have to market our City and County and asked Mr. Martin if a spot could be made more specific to Clewiston such as the golf course. Mr. Martin stated he can do little pieces with his camera crew with little expense.

Commissioner Gardner asked City Attorney Schoech if this was an appropriate expenditure of public funds and he stated promoting the City would be considered a public purpose.

Commissioner Pittman made a motion, seconded by Commissioner Joseph Miller, to approve funding the Scott Martin Challenge in the amount of \$15,000. Vote 5 years, 0 nays.

7. **Resolution No. 2012-01** – This Resolution is needed to incorporate the new Credit Card Policy into the Personnel Manual. Commissioner Pittman stated the approved policy is a beginning.

He would like to see a more detailed policy and employees issued a credit card should sign an acknowledgement.

Commissioner Pittman made a motion, seconded by Commissioner Joseph Miller approve Resolution No. 2012-01 to incorporate the new Credit Card Policy into the Personnel Manual. Vote 5 yeas, 0 nays.

- 8. Discussion of the County's Pain Management Clinic Ordinance** – The County Attorney has asked that the Commission discuss and consider whether the City will accept the County's Pain Management Clinic Ordinance. This is the first draft of the County's ordinance and it must go through public hearings before it will be passed.

Commissioner Pittman made a motion, seconded by Commissioner Joseph Miller, to "opt in" to the County's pain management clinic ordinance. Vote 5 yeas, 0 nays.

- 8.1. Discussion of the Legal Opinion from City Attorney Schoech on Bonuses.** City Attorney Schoech stated that the City does not have a policy to give bonuses for work already performed. Salary increases can be given for work to be done in the future and asked for clarification of the Commission's intent on the City Manager's "bonus". He stated that if it is a salary increase for 2012, it is legal, but if it is for work done in 2011; we do not have a policy in place for it. Commissioner Joseph Miller stated he put the motion in place and in his opinion it was a win-win for the City and the City Manager. The City pays a lower cost if you pay it at one time, but the employee gained by receiving it at one time. Commissioner Miller stated he asked what other employees received and he stated that Mr. McKown was entitled to what other employees received. Commissioner Gardner stated she felt the "bonus" was for efforts done in the past year and Commissioner Miller's motion was for a "bonus" and merit increases are for past performance. Commissioner Pittman stated he thought it was for past performance, but he does not disagree in giving the "bonus". Commissioner Rodriguez asked if the City Manager's overall evaluation grades would have warranted a 3% raise. Commissioner Gardner stated she does not support the payment of the "bonus" and what she saw the night of the award, it was a "bonus" payment and she does not believe that setting up a new precedent is in the best interest of the City. She further stated that her confidence is at an all-time low for the City Manager and her evaluation score will be lowered pending the outcome of her concerns. Commissioner Pittman stated the bonus payment is a gray area because of the new statute and he thought the Commission's intent was to give Mr. McKown a lump sum payment based on past performance.

Commissioner Joseph Miller made a motion, seconded by Commissioner Pittman, to treat City Manager McKown identical to other employees with a merit increase in a lump sum payment. Vote 3 yeas, 2 nays. (Commissioners Gardner and Rodriguez voted nay)

9. Library Presentation – Postponed

- 10. Departmental Monthly Activity Reports** – Presented for information only.

FINANCIAL REPORT FROM THE FINANCE DIRECTOR – Finance Director Byrd

REPORTS FROM CITY MANAGER – None

REPORTS FROM THE CITY ATTORNEY – None

REPORTS FROM THE CITY COMMISSION – Commissioner Rodriguez remarked that it has been a tough night and he doesn't know if we are any closer to resolution, but he would like to say he likes Mr. McKown and feels he is a good guy; this is not personal but he has a problem with some of the decisions he has made and it is the responsibility of the Commission to point them out. Commissioner Rodriguez stated there was no decision to fix the problem, but the Commission has to unify. Commissioner Rodriguez stated that we are in America and everyone has the freedom to speak but employees who directly or indirectly work for the City should be careful when speaking. He does not need anyone questioning his integrity because all he wants is what is best for the City.

Commissioner Gardner stated bringing up the issues she has brought up is about accountability and transparency and asking questions and demanding answers. She stated the Commission holds the City Manager responsible for running the City and if there are concerns, we will work through it, but the City Manager is accountable and the only way to address the problems is in a public meeting and she feels that is her responsibility. Commissioner Gardner stated that when a budget policy is set and not enforced, she has a big problem with that. She stated that ICMA has a code of ethics for City employees and the City Commission and we should have a workshop on policy as soon as possible. Commissioner Gardner feels we need to look at some charter changes because there are some issues and concerns there. She asked that Mr. Shoech give them some direction on the charter. She thanked the people from the community for coming out whether they agreed with her or not. Commissioner Gardner stated she has strong feelings because her family had to leave their country because the people would not speak up and hold people responsible. Clewiston is a great town and we want to make it a better town.

Commissioner Pittman stated that a lot of things have been talked about tonight, especially transparency. He stated the Commission should discuss any problems with the Charter and if we need to have a charter review committee, we can set one up. Any changes to the Charter must be made by referendum. Commissioner Pittman felt that we need a more detailed credit card policy and that we do need a policy about clothing allowances and what is allowable. He stated that merit raises are much less costly than COLA raises and you aren't rewarding employees who are not doing a good job. Commissioner Pittman stated that he has no problem with the City Manager's vehicle because he was hired to run the City. Commissioner Pittman asked about the web site and the temporary parking lot at the hospital. He asked that the Commissioners meet with Utilities Director McCarthy on the Honeywell project and asked Mr. McCarthy to discuss the possible reduction of the initial \$125,000 with Honeywell. Commissioner Pittman asked the Commission if they wanted to put a policy in place regarding budget transfers and amendments.

Mayor Miller stated everyone loves our community and nobody is trying to hide anything; we are trying to be transparent in our work. We have to be wise with City resources. Mayor Miller stated he believes the City is run very well and the services are the best we have ever had. He feels every department is run very well and he is committed to work together. We all want to make Clewiston a better place.

Adjournment:

The meeting was adjourned at 9:10 p.m.

Richard Miller, Mayor

Marilyn McCorvey, City Clerk