

REGULAR MEETING
DECEMBER 2, 2008

The Regular Meeting of the Arcadia City Council was held on December 2, 2008 at 6:00 p.m. in the Margaret Way Building at 23 North Polk Avenue. Council members attending were: Fazzone, Dixon, Johnson, Goodman, and Heine. Also in attendance: Administrator Strube, Attorney Galvano, Captain Anderson, Special Projects Coordinator Hewett, Park and Recreation Supervisor Waters, and Recorder Baumann.

Mayor Fazzone called the meeting to order.

The Invocation was given by Dr. Roosevelt Johnson, Councilman.

Pledge Allegiance to the Flag.

The Minutes of the Regular Meeting of November 18, 2008 were adopted on a motion by Heine; seconded by Goodman and carried.

Administrator Strube addressed the Council and stated that the proposed resolution establishing additional miscellaneous charges relating to water and sewer usage is necessary due to customers tampering with locks on meters after their water service has been turned off for non-payment. He noted that meter registers are very costly to replace. Previously a charge for meter tampering was put in place; however there was no actual charge for the replacement of the meter and associated labor costs. Resolution No 2008-21 establishing miscellaneous charges relating to water and sewer usage was presented. Heine moved to adopt Resolution No. 2008-21; seconded by Johnson and carried.

RESOLUTION NO. 2008-21

A RESOLUTION ESTABLISHING
MISCELLANEOUS CHARGES RELATING TO
WATER AND SEWER USAGE

WHEREAS, City of Arcadia Ordinance No. 822 provides that water and sewer rates and miscellaneous charges shall be adopted from time to time by Resolution.

NOW THEREFORE, BE IT RESOLVED that the following miscellaneous charges relating to water and sewer usage are hereby adopted:

SECTION 1.

Miscellaneous Charges:

Establish Account	\$ 5.00
Late Payment	\$ 10.00
Return Check -NSF	\$ 20.00
Reconnection	\$ 25.00
Meter tampering/unauthorized usage	\$ 100.00 (No damage to equipment)

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(Resolution No. 2008-21 Continued)

METER TAMPERING –WITH EQUIPMENT DAMAGE \$100.00 plus actual costs as below:

Meter Register replacement	\$180.00	
¾" Curbstop	\$ 70.00	(35.00 curbstop & 35.00 labor)
1" Curbstop	\$100.00	(50.00 curbstop & 50.00 labor)
Small Meter Box	\$ 50.00	(25.00 meter box & 25.00 labor)
Jumbo Meter Box	\$ 70.00	(35.00 meter box & 35.00 labor)
Broken or missing bullet lock	\$ 10.00	
Broken or missing paddle lock	\$ 12.00	
Broken or missing "yoke assembly"	\$ 25.00	(for locking curbstop w/o lockwing)

SECTION 2. The rates established in Section 1 shall be effective upon adoption of this resolution.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA in Regular Session at the City Council Chambers of said City of Arcadia, Florida this 2 day of December, 2008.

ATTEST:

CITY OF ARCADIA, FLORIDA

s/s RACHELLE M. BAUMANN, CMC
RACHELLE M. BAUMANN, CMC
CITY RECORDER

s/s RICHARD P. FAZZONE
RICHARD P. FAZZONE
MAYOR

APPROVED AS TO FORM:

s/s WILLIAM S. GALVANO, CITY ATTORNEY
WILLIAM S. GALVANO, CITY ATTORNEY

The Police Activity Report for November, 2008 was presented.

Attorney Galvano addressed the Council and presented a final Retirement Agreement for Administrator Strube which memorializes the terms previously approved by the Council on November 18, 2008. He stated a severability clause and wording to clarify the agreement have been added. He reported that the agreement has been accepted by Administrator Strube and his attorney. Attorney Galvano then attested to the legality of the agreement. Councilwoman Goodman asked about a section in the agreement that would allow for Mr. Strube to stay on with the City after his retirement date. Attorney Galvano stated that the Council is only approving the terms of the retirement agreement and that if they should want to keep Mr. Strube on after December 31, 2008 it would be a separate agreement. Heine moved to accept the Administrator's Retirement Agreement as written and to authorize the Mayor to sign the agreement; seconded by Goodman and carried.

Retirement agreement presented in full

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CITY OF ARCADIA, FLORIDA
and
EDWARD J. STRUBE

RETIREMENT AGREEMENT

This **RETIREMENT AGREEMENT** ("Agreement") is made and entered into this 2nd day of December, 2008, by and between the City of Arcadia, Florida, ("City") and Edward J. Strube ("Mr. Strube").

RECITALS

WHEREAS, Mr. Strube has served as City Administrator for more than twenty-six (26) years; and

WHEREAS, the City and Mr. Strube have mutually determined and agreed that it is now in the best interests of both parties that they part ways; and

WHEREAS, Mr. Strube desires to ease the City's transition into the future; and

WHEREAS, the City desires to recognize the contributions Mr. Strube has made to the City, its government, and its citizens during his tenure as City Administrator.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. The recitals set forth above are true and correct, and are incorporated herein by reference.
2. Mr. Strube hereby retires from the position of City Administrator effective December 31, 2008, ("Retirement Date").
3. Beginning January 1, 2009, Mr. Strube shall be placed in a paid leave status and shall receive weekly payments in an amount equal to the following: (i) all previously accrued vacation and sick leave balances earned but not used prior to the Retirement Date; (ii) all hours which shall accrue during the time he is in the aforesaid paid leave status, including without implied limitation hours for vacation, sick leave, holidays, longevity, and one-week salary bonus; and (iii) severance pay of four hundred eighty (480) work hours. Additionally, associated payroll costs and matching retirement contributions will also be earned and added to the credited hours and shall be disbursed as part of the weekly payments until fully paid out. The City shall calculate the weekly payments based on a forty (40) hour work week and on Mr. Strube's current hourly rate of pay of thirty-five and 85/100 dollars (\$35.85). The City shall continue such weekly payments until Mr. Strube has been fully compensated for all severance and accrued hours as set forth herein.

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4. The City shall indemnify Mr. Strube for all costs and legal fees accruing to him for legal matters brought by third parties and arising out of his employment with the City. Furthermore, the City shall indemnify Mr. Strube for the costs for retaining attorney Steven Wenzel for the negotiation and execution of this agreement and all matters related to it.

5. Conditioned upon the payment of all sums due and owing to Mr. Strube from the City, including without implied limitation all sums pursuant to the above Paragraphs 3 and 4, Mr. Strube hereby releases the City for all rights accruing to him under his current employment contract and the ordinance governing the City Administrator position.

6. Mr. Strube and his current spouse shall be entitled to participate in the City's post-retirement group health insurance plan as a retirement benefit in accordance with Section 14.25 of the City Personnel Manual with one hundred percent (100%) of the premiums for said insurance paid by the City.

7. Following the Retirement Date, the City and Mr. Strube may enter into one or more separate agreements whereby Mr. Strube may agree to (i) perform the duties of City Administrator on an interim basis after the Retirement Date; (ii) assist the Council in the selection and hiring of a new City Administrator; (iii) provide assistance and advisory services to the City during a transition period; (iv) cooperate fully with the interests of the City in regards to ongoing and future litigation involving the City and about which he has knowledge; and/or (v) cooperate on other matters upon the reasonable request of the City. The City understands that Mr. Strube may require as part of any such agreement that the City compensate him for all time spent after the Retirement Date in service to the City. Such compensation will be determined pursuant to any subsequent ad hoc and/or comprehensive agreements between the parties.

8. The provisions of this Agreement are declared by the parties to be severable. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

9. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

10. Should either party file an action to enforce any of the provisions hereof or to recover damages for the breach of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party or parties all reasonable fees, costs, charges and expenses, including but not limited to attorneys' fees and expenditures incurred in connection therewith from the initial pleading through trial, appeal and collection.

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IN WITNESS WHEREOF, the parties hereto have set their hands on the date and year first shown above.

EDWARD J. STRUBE

By:

Edward J. Strube

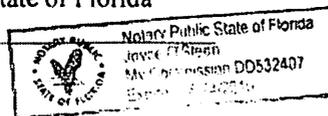
STATE OF FLORIDA
COUNTY OF DESOTO

The foregoing instrument was acknowledged before me this 2nd day of December, 2008, by EDWARD J. STRUBE. He is personally known to me and did not take an oath.

James A. Steen
Notary Public, State of Florida

(Seal)

Print Name:



CITY OF ARCADIA, FLORIDA

ATTEST:

By:

Rachelle M. Baumann
Rachelle M. Baumann, City Recorder

By:

Richard P. Fazzino
Richard P. Fazzino, Mayor

APPROVED AS TO FORM:

By:

William S. Galvano
William S. Galvano, City Attorney

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Attorney Galvano then informed the Council that as of December 31, 2008, the City will no longer have an Administrator, however, the agreement as he previously noted does allow for hiring Administrator Strube on a consultant basis until a new Administrator is in place. Administrator Strube stated that he is willing to work with the Council however they desire after January 1, 2009 noting that there may be some legal contracts that he might need to be involved with. Deputy Mayor Dixon stated that "we may not have this administrator as of December 31st but remember there is an assistant administrator". He stated that "she has been here for over twenty (20) years and if she cannot fill in and know what to do after twenty (20) years of training under the same administrator then something is wrong". He then stated that "the county has gone through this same process and successfully endured it why can't we". This city is not going to go belly up when Ed is gone on the 31st some seem to think I just want Ed gone". "Ed and I are not enemies we have a few fundamental differences and we have our opinion about some things". "Once he leaves I am sure that we will go golfing or camping somewhere in the future". Deputy Mayor Dixon also mentioned that Mr. Tyson a local retired CPA or Mr. Joe Fink might be available to fill the position. He stated that "this ship will not sink". "I know that some want it to sink and they think we can't sail this ship but we've done a really good job as demonstrated and illustrated by the hiring of the City Attorney". He stated that he believes that the Council will do well in replacing the administrator.

Councilwoman Goodman stated that the Florida League of Cities could also assist with supplying an interim Administrator until a new one is hired. She also stated that there are several current employees who could fill the position and she mentioned Special Projects Coordinator Hewett. Mayor Fazzone stated that he had never heard Ms. Joyce O'Steen called an Assistant Administrator and asked if she had been spoken to about filling in as an Interim Administrator. Deputy Mayor Dixon stated that he did speak to Ms. O'Steen and told her that he thought she could do the job. He then stated that he has called her an Assistant Administrator many times and asked Administrator Strube if she was his assistant to which he replied that she is. Deputy Mayor Dixon then stated "I know that some want to make this like a personal vendetta, it's not, Ed and I both know the truth". "He hasn't done anything to me and I haven't done anything to him". "His wife has wanted this for the past two (2) to three (3) years before I got on the Council". "I am going to make it happen for her in a nice way". "I've encouraged him to retire". Mayor Fazzone asked Administrator Strube if he had any comments stating "that he is the one being blasted". Councilwoman Goodman asked the Mayor to stop stating that Mr. Strube is being blasted. She stated that no one is blasting Mr. Strube, he wants to retire and the Council has agreed to that. She then asked Mr. Strube if he felt that he was being blasted to which he replied "not at all". Administrator Strube stated that he felt that the Council is being very generous and appreciative of the work he has done over the last several years and he is looking forward to December 31st. He stated that he would be available on a consulting basis if needed. Councilwoman Goodman moved to hold a Work Session at 5: 00 p.m., prior to the Regular Meeting on December 16, 2008 to discuss how to move forward with putting an interim Administrator in place until the position of City Administrator is filled; seconded by Heine and carried.

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Administrator Strube addressed the Council regarding Specific Authorization No. 5, with Hazen and Sawyer for General Engineering Services. He stated that this is an annual agreement providing engineering services related to Florida Department of Environmental Protection (DEP) Permit for both the Water and Wastewater Treatment Plants and utility matters as they arise. The last agreement was October, 2007. Heine moved to authorize the Mayor to sign Specific Authorization No. 5, with Hazen and Sawyer for General Engineering Services not to exceed \$20,000.00; seconded by Goodman and carried.

The Golf Course Report for the month of October, 2008 was presented.

Deputy Mayor Dixon asked why the Airport Report had not been on the agenda for October and November. Administrator Strube will research why it was not included in the agenda. Councilwoman Goodman stated that the Airport Report and Golf Course Report should be a regular agenda item and if no report is available then it would be noted at that time.

Mr. Bob Allen, a member of the public expressed concern that the City would be without an Administrator on December 31, 2008. He encouraged the Council to work out some type of agreement with Administrator Strube to cover as Administrator until a new Administrator could be hired.

Administrator Strube addressed the Council and presented the most recent Tipping Fee Agreement between DeSoto County and the City of Arcadia. He noted that section five (5) prohibiting the City from increasing rates for residential solid waste collection during the term of the agreement is still in the document. Attorney Galvano stated that after having spoken with Deputy Mayor Dixon he reviewed Florida Statue 403.706 *Local government solid waste responsibilities* which states that "Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charge to municipalities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility". Attorney Galvano stated that a tipping fee agreement is not required in order for the City to be charged the same rate that the County is charging the other franchise customer. He said that the Council has three (3) options 1) accept the agreement as it stands, 2) take out section number 5 or 3) move forward with F.S. 403-706. He does not recommend that the Council sign the current agreement containing the prohibition on increasing rates. Deputy Mayor Dixon presented the Council with a copy of F.S. 403-706 and a copy of the Sun Herald View Point article concerning this issue. He then stated that he feels the County Commissioners actions are political. Dixon then moved to stand firm on the Council's previous vote to have section 5 taken out of the agreement as it was not part of the original agreement approved by the Council and to turn this matter over to Attorney Galvano to resolve along with any questions regarding double taxation; seconded by Johnson and carried.

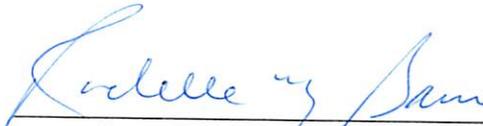
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Council members thanked Administrator Strube for his dedication and hard work for the City of Arcadia over the last twenty-six (26) years.

Councilman Johnson moved to have work session prior to hiring a new administrator in order to have a plan for administrator goals and objectives; seconded by Dixon and carried.

Attorney Galvano thanked the Council for welcoming Attorney Henbest. He assured the Council that in his absence, Attorney Henbest would be very familiar with any issues involving the City and the meeting packet would have been discussed prior to his attending any meetings.

There being no further business the meeting was adjourned.



CITY RECORDER



PRESIDENT