

**MINUTES  
REGULAR MEETING  
ARCADIA CITY COUNCIL  
OCTOBER 6, 2009  
6:00 PM**

The meeting was called to order at approximately 6:02 PM with the following members and staff present:

**Arcadia City Council**

Mayor Richard Fazzone  
Councilwoman Sharon Goodman  
Councilman Roosevelt Johnson

Deputy Mayor Lorenzo Dixon  
Councilman Robert Heine  
Councilman-elect Keith Keene

**Arcadia City Staff**

City Administrator Markae Rupp  
Finance Director Rachelle Baumann  
City Marshal Charles Lee

City Recorder Dana Williams  
City Attorney Jason Henbest

Rev. Alvin Moore gave the invocation which was then followed by the Pledge of Allegiance. Mayor Fazzone called for a roll call with all Councilmembers being present.

**OLD BUSINESS**

**1.A.1. MINUTES OF THE REGULAR MEETING & PUBLIC HEARING OF SEPTEMBER 17, 2009**

Deputy Mayor Dixon pointed out that pages six and seven of these minutes had been replaced and provided to the members at the dais. The City Attorney requested that page one be corrected to reflect his attendance at the meeting rather than that of Attorney Galvano.

On motion of Councilman Johnson and seconded by Deputy Mayor Dixon, the minutes of the regular meeting of September 17, 2009, as amended, were unanimously, 5-0, approved.

**1.A.2. MINUTES OF THE FINAL BUDGET PUBLIC HEARING OF SEPTEMBER 29, 2009.**

Councilwoman Goodman made a motion to approve the minutes of the September 29, 2009, meeting. Councilmember Heine provided a second to the motion, which carried unanimously, 5-0.

**1.B. RESOLUTION NO 2009-18, A RESOLUTION OF APPRECIATION TO OUTGOING MAYOR AND RETIRING COUNCIL MEMBER RICHARD P. FAZZONE.**

The City Recorder read Resolution 2009-18 in its entirety as follows:

**RESOLUTION NO. 2009-18**

**A RESOLUTION OF APPRECIATION TO  
OUTGOING MAYOR AND RETIRING COUNCIL  
MEMBER RICHARD P. FAZZONE**

WHEREAS, On September 26, 1977 Richard "Dick" P. Fazzone was elected by the voters of the City of Arcadia to serve as a member of the City Council, and

WHEREAS, Dick served on the City Council for sixteen (16) years until he resigned on January 1, 1993, and

WHEREAS, Dick served as Mayor four (4) times and Deputy Mayor six (6) times from September 1977 until January 1993, and

WHEREAS, On September 4, 2001 Dick was again elected by the voters of the City of Arcadia to serve as a member of the City Council, and

WHEREAS, Dick served as Mayor two (2) times and Deputy Mayor two (2) times from September 2001 until September 2009, and

WHEREAS, Dick most recently served as Mayor from October 2008 through September 30, 2009, and

WHEREAS, because of his dedication to office, his willingness to serve and his strong commitment to make Arcadia a better community the City of Arcadia wishes to express its sincere appreciation to Dick for his many years of public service to the Citizens of Arcadia.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Arcadia that Council member Richard P. Fazzone be highly commended for his devotion and loyalty to the City of Arcadia, and in appreciation for his years of dedicated public service to the citizens of Arcadia, a key to the City is hereby presented as a universal symbol of lasting friendship and best wishes for much success in the future.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA in regular session this 6th day of October, 2009.

/s/ LORENZO L. DIXON, M. Phy  
DEPUTY MAYOR

/s/ ROOSEVELT JOHNSON, Ed.D.  
COUNCILMAN

/s/ ROBERT W. HEINE  
COUNCILMAN

/s/ Dr. SHARON T. GOODMAN  
COUNCILWOMAN

ATTEST:

/s/s MARKAE RUPP  
CITY ADMINISTRATOR

/s/ RACHELLE M. BAUMANN, CMC  
CITY RECORDER

/s/ CHARLES J. LEE  
MARSHAL

**Councilman Johnson offered a motion to approve the resolution which was seconded by Councilman Heine. The motion carried unanimously, 5-0.**

Mayor Fazzone thanked everyone for their support over the years, adding he is looking forward to spending more time traveling and with his family. He referred to his tenure with the Council as a "nice trip down the road" and briefly mentioned the challenges from time to time although pointing out that as a community, Arcadia has persevered. The Mayor congratulated incoming Councilmember Keith Keenan and again, thanked the public and his colleagues for their support. The City Administrator presented Mayor Fazzone with a plaque of the resolution, a gavel, and a key to the City.

At this point, Mr. Fazzone passed the gavel to Deputy Mayor Dixon and left the dais.

#### NEW BUSINESS

##### **2.A. OATH OF OFFICE**

The Honorable Don Hall, 12<sup>th</sup> Circuit County Court Judge, administered the Oaths of Office to newly elected members Dr. Sharon Goodman, Mr. Keith Keene, and Mr. Robert Heine, Councilmembers and to City Marshall Charles Lee.

##### **2.B. COUNCIL REORGANIZATION**

The Vice Mayor opened the floor to the Council for nominations to the position of Mayor.

Councilman Johnson made a motion to nominate Lorenzo Dixon to the office of Mayor. The motion died for lack of a second.

Councilman Keene made a motion to nominate Robert Heine for the office of Mayor. This motion also died for lack of a second.

**Councilman Heine made a motion to nominate Dr. Roosevelt Johnson to the office of Mayor. Deputy Mayor Dixon provided a second and the motion carried 4-1, with Dr. Johnson casting the dissenting vote.**

Mayor Johnson explained his dissention by saying that in 18 years on the City Council, he felt it was tradition for a Deputy Mayor to succeed his predecessor as Mayor and that he believes others should be treated as [they] would want to be treated.

The City Administrator provided some historical information regarding these elections, saying that on several occasions, a Mayor has served for four or more years and that there is no written provision for the Deputy position to automatically move up.

The Deputy Mayor admitted that he had expected to be appointed Mayor by relying on tradition and having heard rumors around town, but he was accepting of the outcome and would continue to serve on the Council in his member's role. Mr. Dixon also stated that while he would have loved to have been Mayor, his service as a Councilman would not provide any lesser, or greater, degree of commitment to the community.

Mr. Del Crabtree, 218 N. Hernando Avenue, spoke from the public asking for an explanation by the Council as to why tradition is not being honored in this instance. Mr. Crabtree called the outcome a "travesty" and added that while a lot of things can divide a community, when someone does a good job that should not be one of the divisions.

Mr. Johnnie Lee Rhyne, 1000 N. Arcadia Avenue, also addressed the Council asking what qualifications were needed in order to be Mayor. He felt the reorganization should have occurred as anticipated.

Councilman Keene stated he was "all about tradition" but in addressing Mr. Rhyne's question, the only qualification required to be Mayor was for the individual to be a member of the City Council. Mr. Keene added that we all here, live in America where individuals can vote for whoever they choose and in that regard, even he as the newest elected member would qualify to be Mayor. He continued that while he appreciates Mr. Dixon's service, the Council as an elected body will continue to run the City effectively regardless of the reorganization decisions.

**Councilwoman Goodman made a motion to nominate Robert Heine for the position of Deputy Mayor. Councilman Keene provided a second and a voice vote recorded 4-1 approval with Councilman Dixon dissenting.**

**2.B.1. RESOLUTION NO. 2009-19, A RESOLUTION APPOINTING MAYOR, DEPUTY MAYOR AND PRESIDING OFFICERS: SETTING TERM OF OFFICE**

The City Recorder read Resolution No. 2009-19 in its entirety.

**RESOLUTION NO. 2009-19**

**A RESOLUTION APPOINTING MAYOR, DEPUTY  
MAYOR AND PRESIDING OFFICERS: SETTING  
TERM OF OFFICE.**

IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARCADIA,  
FLORIDA:

SECTION 1. That City Council Member Roosevelt Johnson be appointed to the Office of Mayor of the City of Arcadia, Florida and Presiding Officer of City Council.

SECTION 2. That City Council Member Robert W. Heine be appointed to the Office of Deputy Mayor of the City of Arcadia, Florida and Presiding Officer of City Council.

SECTION 3. That said Appointees are hereby charged with all powers, duties, functions and responsibilities of their respective offices as set forth in the Charter and Ordinances of the City of Arcadia, Florida.

SECTION 4. That their term of Office shall be from the date of the Resolution through the end of the Fiscal Year 2009-2010 or until their successors are appointed.

PASSED BY THE CITY COUNCIL OF ARCADIA, FLORIDA, at Regular Session in Arcadia, Florida, this 6<sup>th</sup> day of October 2009.

/s/ DR. SHARON T. GOODMAN  
Councilwoman

/s/ ROOSEVELT JOHNSON, Ed. D  
Councilman

/s/ ROBERT W. HEINE  
Councilman

/s/ LORENZO DIXON, M. Psy.  
Councilman

/s/ KEITH KEENE  
Councilman

ATTEST:

/s/ DANA WILLIAMS, CMC  
City Recorder

**On motion of Councilman Keene, seconded by Councilman Dixon, Resolution 2009-19 was unanimously, 5-0, approved.**

CONSENT AGENDA

## 3.A. CAR CRUZ FOR THE VETERAN'S - NOVEMBER 21, 2009

On motion of Councilman Heine and seconded by Councilman Goodman, the Car Cruz for the Veteran's event, scheduled for November 21, 2009, was unanimously, 5-0, approved.

ORDINANCES4.A. ORDINANCE # 954

AN ORDINANCE OF THE CITY OF ARCADIA, AMENDING CHAPTER 2, ARTICLE VII, DIVISION 3, SECTION 2, OF THE CODE OF ORDINANCES OF THE CITY OF ARCADIA, AMENDING THE CITY OF ARCADIA POLICE OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM; AMENDING SECTION 1, DEFINITIONS; AMENDING SECTION 3, BOARD OF TRUSTEES; AMENDING SECTION 4, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 18, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 19, DOMESTIC RELATIONS ORDERS, RETIREE DIRECTED PAYMENTS, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 27, PRIOR POLICE SERVICE; AMENDING SECTION 28, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA;

SECTION 1: That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System. is hereby amended by amending Section 1 , Definitions, to amend the definitions of "Actuarial Equivalent" and "Firefighter", to read as follows:

Actuarial Equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of eight (8%) per annum, determined on the basis of actuarial equivalency using assumptions adopted by the Board such that benefit calculations are not subject to City discretion. This definition may only be amended by the City pursuant to the recommendation of the Board using assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to City discretion.

Firefighter means an actively employed full-time person employed by the County, who is certified as a Firefighter as a condition of employment in accordance with the provisions of Section 633.35, Florida Statutes, and whose duty it is to extinguish fires, to protect life and to protect property. Effective June 1, 2006, all Firefighter Members of the System shall be so certified and shall be employed by Desoto County as a result of the merger of the City Fire Department with the County. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

**SECTION 2:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System, is hereby amended by amending Section 3, Board of Trustees, subsection 1, to read as follows:

1. The sole and exclusive administration of and responsibility for the proper operation of the System and for making effective the provisions of this ordinance is hereby vested in a Board of Trustees. The Board is hereby designated as the plan administrator. The Board shall consist of five (5) Trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the City, who shall be appointed by the Arcadia City Council, one (1) of whom shall be a Police Officer Member and one (1) of whom shall be a Firefighter Member, who shall be elected by a majority of the Police Officers or Firefighters, respectively, who are Members of the System. The active Firefighter Member seat may be held by either a retired Firefighter or an active Firefighter who is elected by the active and retired Firefighters of the Plan. If there are no active or retired Firefighters remaining in the Plan or capable of serving, the remaining Board members may elect an individual to serve in the active Firefighter seat. Upon receipt of such person's name, the Arcadia City Council shall, as a ministerial duty, appoint such person to the Board. The fifth Trustee shall be chosen by a majority of the previous four (4) Trustees as provided for herein, and such person's name shall be submitted to the Arcadia City Council. Upon receipt of the fifth person's name, the

Arcadia City Council shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four (4) Trustees appointed or elected as herein provided and shall serve a ~~two (2)~~ four (4) year term unless he sooner vacates the office. Each resident Trustee shall serve as Trustee for a period of two (2) four (4) years, unless he sooner vacates the office or is sooner replaced by the Arcadia City Council at whose pleasure he shall serve. Each Member Trustee shall serve as Trustee for a period of ~~two (2)~~ four (4) years, unless he sooner leaves the employment of the City as a Police Officer or the County as a Firefighter or otherwise vacates his office as Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. Each Trustee may succeed himself in office. DROP participants can be elected as but not vote for elected trustees. The Board shall establish and administer the nominating and election procedures for each election. The Board shall meet at least quarterly each year. The Board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

**SECTION 3:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System,

is hereby amended by amending Section 4, Finances and Fund Management, subsection 6.B.(5)(b), to read as follows:

\* \* \* \* \*

6. B. (5) (b) Up to ~~ten~~ twenty-five percent (10 25%) of the assets of the Fund at market value may be invested in foreign securities.

\* \* \* \* \*

**SECTION 4:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System. is hereby amended by amending Section 18, Repeal or Termination of System, to read as follows:

**SECTION 18. REPEAL OR TERMINATION OF SYSTEM.**

1. This ordinance establishing the System and Fund, and subsequent ordinances pertaining to said System and Fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the Member or Beneficiary shall not be affected thereby ~~except to the extent that the assets of the Fund may be determined to be inadequate.~~

2. If this ordinance shall be repealed, or if contributions to the System are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in Chapter 121, Florida Statutes, the Board shall continue to administer the System in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and ~~the assets of the System shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof such benefits shall be nonforfeitable.~~

3. ~~The following shall be the order of priority for purpose of allocating the assets of the system as of the date of repeal of this ordinance, or if contributions to the System are discontinued with the date of such discontinuation being determined by the Board.~~

A. ~~Apportionment shall be first be made in respect of each Retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on date on account of retired or disabled (but since deceased) Member, and each Member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the Actuarial Equivalent of such benefit, provide that, is such asset value be less than the aggregate of such amounts, such~~

~~amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~B. If there be any asset value remaining after the appointment under paragraph A, apportionment shall next be made in respect of each Member in the service of the City or County on such date who is vested and who is not entitled to an apportionment under paragraph A, in the amount required to provide the Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), based on the Credited Service and Average Final Compensation as of such date, and each vested former Member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~C. If there be any asset value after the apportionments under paragraphs A and D, apportionment shall be made in respect of each Member in the service of the City or County on such date who is not entitled to an apportionment under paragraphs A and D in the amount equal to Member's Accumulated Contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~D. If there be any asset value remaining after the apportionments under paragraphs A, D, and C, apportionment shall lastly be made in respect of each Member included in paragraph C above to the extent of the Actuarial Equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph C, based on the Credited Service and Average Final Compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~E. In the event that there be asset value remaining after the full apportionment specified in paragraphs A, B, C, and D, such excess shall be returned to the City and County, less return of the State's contributions to the State, provided that, if the excess is less than the total contributions made by the City and County and the State to the date of termination such excess shall be divided proportionately to the total contributions made by the City, County and the State.~~

~~The allocation of the Fund provided for in this subsection may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits~~

~~determined in accordance with this subsection. The Fund may be distributed in one (1) sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board may direct. The Fund may be continued in existence for purposes of subsequent distributions.~~

4. ~~After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general funds of the City and County.~~

3. The fund shall be distributed in accordance with the following procedures:

- A. The Board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The Board shall inform the City if additional assets are required, in which event the City shall continue to financially support the Plan until all nonforfeitable benefits have been funded.
- B. The Board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each Police Officer or Firefighter entitled to benefits under the plan as specified in subsection C.
- C. The Board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection B. involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the Police Officer's or Firefighter's Accumulated Contributions to the Plan, with interest if provided by the Plan, less the value of any plan benefits previously paid to the Police Officer or Firefighter.
- D. If there is asset value remaining after the full distribution specified in subsection C., and after the payment of any expenses incurred with such distribution, such excess shall be returned to the City, less return to the State of the State's contributions, provided that, if the excess is less than the total contributions made by the City and the State to date of termination of the Plan, such excess shall be divided proportionately to the total contributions made by the City and the State.
- E. The Board shall distribute, in accordance with subsection B., the amounts determined under subsection C.

If, after twenty-four (24) months after the date the Plan terminated or the date the Board received written notice that the contributions thereunder were being permanently discontinued, the City or the Board of the Fund affected has not complied with all the provisions in this Section, the Florida Department of Management Services will effect the termination of the Fund in accordance with this Section.

**SECTION 5:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System, is hereby amended by amending Section 19, Domestic Relations Orders, Retiree Directed Payments, Exemption from Execution, Non-Assignability; subsection 2, Retiree Directed Payments, to read as follows:

2. Retiree Directed Payments.

The Board may, upon written request by a Retiree or by a dependent, when authorized by a Retiree or the Retiree's Beneficiary, authorize the System to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the City, to pay the certified bargaining agent of the City, to make payment to insurance companies for insurance premiums as permitted by Chapters 175 and 185, Florida Statutes and to make any payments for child support or alimony.

**SECTION 6:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System, is hereby amended by amending Section 27, Prior Police Service, to read as follows:

**SECTION 27. PRIOR POLICE SERVICE.**

Unless otherwise prohibited by law, and except as provided for in Section 1, the years or fractional parts of years that a Member previously served as a Police Officer with the City during a period of previous employment and for which period Accumulated Contributions were withdrawn from the Fund, or the years and fractional parts of years that a Member served as a Police Officer for any other municipal, county or state law enforcement department in the United States shall be added to his years of Credited Service provided that:

1. The Police Officer contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a Member of this System for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the Fund plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of Credited Service.
2. The request shall be made only once and made by the Police Officer on or before twelve (12) months from the date of his employment or reemployment with the City Police Department.
3. Payment by the Police Officer of the required amount shall be made within six (6) months of his request for credit and shall be made in one (1) lump sum payment

upon receipt of which Credited Service shall be given.

4. The maximum credit under this Section, for service with an employer other than the City of Arcadia, when combined with Credited Service purchased pursuant to Section 26, shall be five (5) years of Credited Service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum credit under this Section for service with the City of Arcadia and it shall count for all purposes including vesting.
5. In no event, however, may Credited Service be purchased pursuant to this Section for prior service with any other municipal, county or state law enforcement department or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan as set forth in Section 15, subsection 8.B II.B.
6. For purposes of determining credit for prior service as a Police Officer as provided for in this Section, in addition to service as a Police Officer in this State, credit may be given for federal other state, county or municipal service if the prior service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement, as provided under Chapter 943, Florida Statutes, or the Police Officer provides proof to the Board that such service is equivalent to the service required to meet the definition of a Police Officer under Section 1. Definitions.

**SECTION 7:** That Chapter 2, Article VII, Division 3, Section 2 of the Code of Ordinances of the City of Arcadia, The City of Arcadia Police Officers' and Firefighters' Retirement System, is hereby amended by amending Section 28, Deferred Retirement Option Plan, to amend subsections 2.C., 2.E., 3.B.(3), and 4.B.(1), to read as follows:

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2. C. Period of Participation.

As of the effective date of the ordinance adopting this Section, a Member who elects to participate in the DROP under subsection 2.B., shall participate in the DROP for a period not to exceed ~~sixty (60)~~ ninety-six (96) months beginning at the time his election to participate in the DROP first becomes effective. Any person who is currently participating in the DROP on the date that the DROP participation period is changed from sixty (60) to ninety (90) months may participate in the DROP for up to ninety-six (96) months. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the City or County not later than the date provided for in the previous sentence. A Member may participate only once.

\*\*\*\*\*

2. E. (1)

A Member's Credited Service and his accrued benefit under the System shall be determined on the date his election to participate in the DROP first becomes effective. For purposes of determining the accrued benefit, the Member's Salary for the purposes of calculating his Average Final Compensation shall include an amount equal to any

lump sum payments which would have been paid to the Member and included as Salary as defined herein, had the Member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the Member shall be deducted from the first payments to the Member's DROP Account. The Member shall not accrue any additional Credited Service or any additional benefits under the System (except for any additional benefits provided under any cost-of-living adjustment in the System) while he is a participant in the DROP. After a Member commences participation, he shall not be permitted to again contribute to the System nor shall he be eligible for disability or pre-retirement death benefits.

\* \* \* \* \*

3. B. (3)

A Member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the Member is a participant in the DROP. A Member's final DROP account value for distribution to the Member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. Except as provided for in Section 30, if a Member is employed by the City Police or County Fire Departments after participating in the DROP for ~~five (5)~~ eight (8) years, then beginning with the Member's ~~61st~~ 97th month of DROP participation, the Member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the Member is employed by the City Police or County Fire Departments. A Member employed by the City Police or County Fire Departments after ~~five (5)~~ eight (8) years of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional Credited Service, except as otherwise provided for in Section 29, Reemployment After Retirement.

4. B. (1)

Unless the Member elects otherwise, distribution of his DROP Account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection 4.F. ~~A Member may; however, elect, in such time and manner as the Board shall prescribe, that his DROP distribution be used to purchase a non-forfeitable fixed annuity payable in such form as the Member may elect.~~ Elections under this paragraph shall be in writing and shall be made in such time or manner as the Board shall determine.

**SECTION 8:** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Arcadia.

**SECTION 9:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 10:** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 11:** That this Ordinance shall take effect pursuant to Chapter 73-403 of the laws of the State of Florida.

PASSED ON FIRST READING, this 15<sup>th</sup> day of September 2009.

PASSED ON SECOND READING, this 6<sup>th</sup> day of October 2009.

/s/ Roosevelt Johnson, Ed. D.  
Mayor

ATTEST:

/s/ Dana Williams, CMC

Approved to form:

/s/ City Attorney

Deputy Mayor Heine made a motion to waive the rules and have Ordinance 954 read by title only. The motion was seconded by Councilman Keene and passed unanimously, 5-0. The City Recorder read Ordinance 954 by title and presented it on second reading.

Deputy Mayor Heine then made a motion, which was seconded by Councilman Dixon, to adopt Ordinance 954. A roll call vote recorded unanimous, 5-0, approval.

#### 4.B. ORDINANCE 955

Councilwoman Goodman offered a motion, which was seconded by Councilman Dixon to waive the rules and have Ordinance 955 read by title only. The motion carried unanimously, 5-0. The City Recorder read Ordinance 955 by title only and presented it for consideration on second reading.

#### ORDINANCE 955

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA, A MUNICIPAL CORPORATION, RELATED TO HISTORIC PRESERVATION; CREATING CHAPTER 60 OF THE CODE OF ORDINANCES, CITY OF ARCADIA, FLORIDA; PROVIDING FOR THE PROTECTION, ENHANCEMENT, AND PERPETUATION OF HISTORIC

**STRUCTURES, SITES, AND DISTRICTS WITHIN THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

THE CITY OF ARCADIA, FLORIDA, HEREBY ORDAINS that the Code of Ordinances, City of Arcadia, Florida, is amended to create a new Chapter 60 to read in its entirety as follows:

**CHAPTER 60**

**HISTORIC PRESERVATION**

**Article I. In General.**

**Sec. 60-1. Purpose and Intent.**

(a) It is hereby declared a matter of public policy that the protection, enhancement, perpetuation, and use of improvements or sites of special character or special architectural, archeological, or historic interest or value is a public necessity and is required in the interest of the health, prosperity, safety, and welfare of the people of the City of Arcadia.

(b) The purpose of this chapter is to:

(1) Effect and accomplish the protection, enhancement, and preservation of such improvements, sites, and districts which represent or reflect elements of the city's cultural, social, economic, political, and architectural history.

(2) Safeguard the city's historic, prehistoric, and cultural heritage, as embodied and reflected in such historic structures, sites, and districts.

(3) Stabilize and improve property values, and enhance the visual and aesthetic character of the city.

(4) Protect and enhance the city's attractions to residents, tourists, and visitors, and serve as a support and stimulus to business and industry.

**Sec. 60-2. Definitions.**

The terms used in this chapter shall have the following meanings:

(a) *Certificate of Appropriateness* means the certificate issued by the commission approving alteration, rehabilitation, construction, reconstruction, or demolition of a historic structure, historic site, or any improvement in a historic district.

(b) *Commission* means the Historic Preservation Commission created under this chapter.

(c) *Historic district* means an area located within the city which is of historic significance and which has been designated as a historic district by the city council pursuant to section 60-6, or which has been listed in the National Register of Historic Places or such other similar federal or state designation.

(d) *Historic site* means any parcel of land located within the city which is of historic significance and which has been designated as a historic site by the city council pursuant to section 60-6, or which has been listed in the National Register of Historic Places or such other similar federal or state designation. Historic sites shall include improved parcels, or parts thereof, on which are situated any historic structures and any abutting improved parcels, or parts thereof, used as and constituting part of the premises on which any historic structures are situated.

(e) *Historic structure* means any improvement located within the city which is of historic significance and which has been designated as a historic site by the city council pursuant to section 60-6, or which has been listed in the National Register of Historic Places or such other similar federal or state designation.

(f) *Improvement* means any building, structure, place, work of art, or other object constituting a physical betterment of real property, or any part of such betterment, including without implied limitation streets, alleys, sidewalks, curbs, lighting fixtures, signs, and the like.

#### **Sec. 60-3. Historic Preservation Commission.**

A Historic Preservation Commission is hereby created. The City Council, in its discretion, may constitute a separate commission to sit in this capacity or may appoint the local planning agency for the City to serve in this capacity. If a separate body is constituted to serve in this capacity, the membership shall consist of at least seven (7) members and shall be comprised as follows, if available in the community: at least one member shall be a registered architect; at least one member shall be a historian; at least one member shall be a licensed real estate broker; all members shall have a known interest in historic preservation; and all members shall be citizens of the city. The commissioners shall be appointed by majority vote of the city council. The city administrator, or his/her designee, shall provide any necessary clerical or administrative support for the commission.

#### **Sec. 60-4. Historic Structure, Historic Site, and Historic District Designation Criteria.**

(a) For purposes of this ordinance, a historic structure, historic site, or historic district designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural, archeological, or cultural significance to the city such as historic structures, sites, or districts which:

(1) Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or

(2) Are identified with historic personages or with important events in national, state or local history; or

(3) Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or

(4) Are representative of the notable work of a master builder, designer or architect who influenced his age; or

(5) Have yielded, or may be likely to yield, information important to prehistory or history.

(b) The commission shall adopt specific operating guidelines for historic structure, historic site, and historic district designation providing such are in conformance with the provisions of this ordinance.

#### **Sec. 60-5. Powers and Duties.**

(a) **Designation.** The commission shall have the power, subject to section 60-6, to recommend designation of historic structures, historic sites, and historic districts within the city limits. Final designations shall be made by the city council. Such recommendations and final designations shall be made based on the criteria contained in section 60-4. Once designated, such historic structures, historic sites, and structures and sites within historic districts shall be subject to all the provisions of this ordinance.

(b) **Recognition of Historic Structures, Sites, and Districts.** At such time as a historic structure, site, or district has been properly designated, the city, in cooperation with the property owner, may cause to be prepared and erected on such property a suitable plaque declaring that such property is a historic structure, site, or district. The failure to prepare and erect any such marker, or the subsequent removal thereof, shall in no way affect the designation of the historic structure, site, or district, and shall have no impact upon the implementation of the provisions of this chapter.

(c) **Regulation of Construction, Reconstruction, Alteration, and Demolition.**

(1) Unless and until a certificate of appropriateness has been granted by the city council, no owner or person in charge of a historic structure, a historic site, or a structure within a historic district shall:

a. reconstruct, alter, or demolish, or cause or allow any reconstruction, alteration, or demolition to occur to, all or any part of the exterior of such property; or

b. construct, or cause or allow any construction of, any improvement upon such designated property or properties.

(2) Further, unless and until a certificate of appropriateness has been granted by the city council, the building official shall not issue a permit for any such work.

(3) Upon filing of an application for a certificate of appropriateness with the city, the commission shall review the application for conformity with the following criteria, and shall recommend issuance of the certificate of appropriateness unless:

a. in the case of a designated historic structure or historic site, the proposed work would detrimentally change, destroy, or adversely affect any exterior feature of the improvement or site upon which said work is to be done;

b. in the case of the construction of a new improvement upon an historic site, or within an historic district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site or within such district;

c. in the case of any property located in a historic district, the proposed construction, reconstruction, exterior alteration, or demolition does not conform to the purpose and intent of this chapter and/or to the objectives and design criteria of any historic preservation plan approved for said district;

d. the building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the city and state; or

e. in the case of a request for the demolition of a deteriorated building or structure, any economic hardship or difficulty claimed by the owner is self-created or is the result of any failure to maintain the property in good repair.

(4) The commission shall make its recommendation within forty-five (45) days of the filing of the application. If the commission fails to make a recommendation within that period, the application shall be forwarded to the city council for action without any recommendation.

(5) The final decision shall rest with the city council. The city council shall render the final decision within sixty (60) days of the filing of the application. If no decision is made within such time period, the application shall be deemed approved, and the city administrator shall issue the certificate of appropriateness.

(6) The issuance of a certificate of appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the city. A

building permit or other municipal permit shall be invalid if it is obtained without the presentation of the certificate of appropriateness required for the proposed work.

(7) Ordinary maintenance and repairs may be undertaken without a certificate of appropriateness provided that the work involves repairs to existing features of a historic structure or site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.

**Sec. 60-6. Procedures.**

(a) Applications.

(1) Application for designation of any property as a historic structure or a historic site, or rescission of any such prior designation, may be made only by the owner(s) of such property.

(2) Application for designation of any area as a historic district, or rescission of any such prior designation, may be made only by the owner(s) of at least fifty percent (50%) of the land area to be included in such historic district. Any application for designation as a historic district shall be accompanied by a draft historic preservation plan, which shall be reviewed concurrently with the application for designation.

(3) The city council may, upon its own motion, apply for any property to be designated as a historic structure or site, for any area to be designated as a historic district, or for the rescission of any previously made designations. Any city-initiated application for designation as a historic district may be accompanied by a draft historic preservation plan or such plan may be prepared by the city after final designation has been approved by the council.

(4) All applications shall be made to the city administrator or his/her designee, who shall forward same to the commission for hearing.

(b) Designation of Historic Structures, Sites, and Districts.

(1) Upon receipt of an application, the commission shall hold a public hearing to review the application and make its recommendation based upon a review of the criteria in section 60-4, above. At such public hearing, the commission shall hear all proffered testimony of interested persons and any expert witnesses and shall review any written records submitted to it. Within ten (10) days after the close of the public hearing, the commission shall make its recommendation, which shall be reduced to writing for formal presentation to the city council.

(2) The city council, upon receipt of a recommendation from the

commission, shall hold a public hearing, shall hear all proffered testimony of interested persons and any expert witnesses, and shall review any written records submitted to it. Within ten (10) days after the close of the public hearing, the council shall make the final determination regarding designation or rescission, as the case may be. The council's decision shall be in the form of a city resolution and shall include findings of fact related to the specific criteria contained in section 60-4.

(3) At least ten (10) days prior to both the commission and the council hearings, the city shall notify the owners of record, as listed in the office of the county property assessor, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property or properties affected. Such notice shall include the address or general location (where no specific address is assigned) of, and a location map showing, the property(ies) or area(s) which will be discussed at the hearing. Such notice shall further include the time and place at which such public hearing shall occur.

(c) Adoption of and Revisions to Historic Preservation Plans.

(1) Each historic preservation plan shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development within the area, and a statement of preservation objectives.

(2) Concurrent with the review of any private or city-initiated application for designation of a historic district, or subsequent to the approval of such any city-initiated application, the commission shall hold a public hearing to review and recommend action on a historic preservation plan for the area. At such public hearing, the commission shall hear all proffered testimony of interested persons and any expert witnesses and shall review any written records submitted to it. Within ten (10) days after the close of the public hearing, the commission shall make its recommendation, which shall be reduced to writing for formal presentation to the city council.

(3) The city council, upon receipt of a recommendation from the commission, shall hold a public hearing, shall hear all proffered testimony of interested persons and any expert witnesses, and shall review any written records submitted to it. Within ten (10) days after the close of the public hearing, the council shall make the final determination regarding approval of the plan. The council's decision shall be in the form of a city resolution and shall include findings of fact related to the specific criteria contained in subparagraph (1), above.

(4) If a historic preservation plan is being reviewed concurrent with the application for designation, the notices for the public hearings for consideration of such application shall indicate as much. Otherwise, if a historic preservation plan is being reviewed separately, said notices shall be provided in

the same manner as indicated in subparagraph (b)(2), above.

**Sec. 60-7. Interim Control.**

No building permit shall be issued by the building official for alteration, construction, demolition, or removal of a nominated historic structure, a nominated historic site, or any property or structure within a nominated historic district from the date of the meeting of the commission at which a nomination form is first presented until the final disposition of the nomination by the city council unless such alteration, removal, or demolition is authorized by formal resolution of the city council as necessary for public health, welfare, or safety. In no event shall the delay be for more than one hundred eighty (180) days.

**Sec. 60-8. Penalties for Violations.**

Any person or persons violating any provision of this section shall be fined up to two hundred fifty dollars (\$250) for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate offense. Notice of violations shall be issued by the city administrator, the building official, or any code enforcement officer of the city.

**Sec. 60-9. Recognition of Vested Rights.**

Nothing in this chapter shall be deemed as an attempt to abrogate any vested right any property owner may have acquired prior to the effective date of the ordinance by which this chapter was adopted. Any property owner who believes the provisions of this chapter infringe upon any vested right shall indicate same upon the first application for any permit or approval (including without implied limitation any building permit or certificate of appropriateness) for any construction, reconstruction, alteration, or demolition to occur on any property regulated hereunder.

**Sec. 60-10. Severability.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

PASSED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, on this 6<sup>th</sup> day of October 2009.

/s/ ROOSEVELT JOHNSON, Ed. D.  
MAYOR

ATTEST:

/s/ Dana Williams, CMC  
CITY RECORDER

APPROVED AS TO FORM:  
/s/WILLIAM S. GALVANO  
CITY ATTORNEY

FIRST READING: September 15, 2009  
SECOND READING October 6, 2009

On motion of Councilman Dixon, seconded by Deputy Mayor Heine, the Council voted unanimously, 5-0, to adopt on second reading Ordinance 955 related to Historic Perseveration.

**RESOLUTIONS**

**5.A. RESOLUTION 2009-20 REGARDING THE AIRPORT**

Councilman Dixon made a motion to waive the rules and have resolution 2009-20 read by title only. Councilwoman Goodman provided the second and a voice vote recorded unanimous, 5-0, approval. The City Recorder read the following resolution by title:

**RESOLUTION NO. 2009-20**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, REGARDING THE AIRPORT; AMENDING AND RESTATING IN ITS ENTIRETY RESOLUTION NO. 2009-8; ESTABLISHING THE AIRPORT ADVISORY COMMITTEE AND THE PROCEDURES AND RULES GOVERNING SAME; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, on May 5, 2009, the City Council of the City of Arcadia adopted Resolution No. 2009-8 which established the Airport Advisory Committee; and

**WHEREAS**, it recently came to the attention of the City that the Committee's efforts and the City's day-to-day operations are hampered by the inclusion of the City Administrator as an ex officio member of the Committee as the state's Government-in-the-Sunshine Law prevents the Administrator from discussing many airport-related matters with other members of the Committee except at noticed meetings of the Committee; and

**WHEREAS**, it was never the intent of the City Council for such problems to arise; and

**WHEREAS**, the City Council now desires to amend and restate in its entirety Resolution No. 2009-8.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, AS FOLLOWS:**

**Section 1. Establishment of the Airport Advisory Committee.** The Airport Advisory Committee is hereby established as follows:

(1) This Committee shall be advisory only and may be abolished, disbanded, or reorganized at any time by the Council pursuant to an amendment to this resolution.

(2) The Council shall appoint members to the Committee by motion made at a public meeting. The motion may provide for the term of office of each member, and the terms of office may be staggered, all in the sole discretion of the Council.

(3) Open positions for members of the Committee shall be announced at a City Council meeting and may be advertised in a manner determined by the City Administrator. Applicants for such positions shall follow the procedures set by the Council and the City Administrator regarding advisory board applications and shall provide assurances to the Council of the lack of conflicts and potential conflicts of interest.

(4) The Committee should be comprised of at least three (3) and no more than seven (7) members. The Committee members should possess or obtain a basic understanding of the current airport operations and should express an interest in improving the Airport for current and future users as well as attracting more clientele to the Airport and increasing its profitability. At least two (2) members shall be residents or business owners in the City, and at least two (2) other members shall be residents or business owners in the unincorporated area of De Soto County.

(5) The City Administrator shall act as a liaison between the Committee and the Council.

(6) The Committee shall follow any meeting procedures adopted by the Council, or in absence of same or where same are silent by the most recent edition of Robert's Rules of Order. Unless a quorum is present, the Committee shall not take formal action but may meet to hear presentations. Meetings shall be scheduled in the discretion of the Committee or at the request of the Council or the City Administrator.

(7) Staff, administrative, and facility support for the Committee shall be provided by a city department designated by the City Administrator. Minutes of the meetings of the Committee shall be kept by the City Recorder. The City Attorney shall provide all legal services to the Committee but only as specifically directed, from time to time, by the Council; provided, however, the City Attorney shall not be required to undertake or continue representation of the Committee where to do so would, in the opinion of the Attorney, conflict with his representation of the Council or constitute a violation of the Rules Regulating the Florida Bar.

(8) A member of the Committee may resign at will or be removed at any time by the Council. Should any member of the Committee resign or be removed before completion of his/her term, the Council shall appoint a new member for the remainder of such member's term following the procedure included herein above.

**Section 2. Amendment and Restatement of Resolution No.2009-8.** Resolution No. 2009-8 is hereby amended and restated in its entirety by this Resolution.

**Section 3. Effective Date.** This Resolution shall be take effect immediately upon adoption.

**PASSED AND DULY ADOPTED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, FLORIDA, with a quorum present and voting this 6<sup>th</sup> day of October 2009.**

By: /s/ Dr. Roosevelt Johnson, Ed.D.  
Mayor

ATTEST:

APPROVED AS TO FORM:

/s/ Rachele M. Baumann  
City Recorder

/s/ William S. Galvano  
City Attorney

On motion of Councilwoman Goodman, seconded by Councilmember Keene, Resolution 2009-20 was unanimously, 5-0, approved via roll call vote.

DISCUSSION ITEMS

**6.A. QUOTES FOR ROOFING OF THE WAY BUILDING AND CITY HALL**

The City Administrator reported that during the past six months, the roof on the Way Building has required and been repaired four times; most recently as a result of water pouring from the ceiling onto and over her computer. She continued that recent repairs have been done piecemeal; and therefore has requested a quote for a complete reroofing of both the Way and City Hall buildings. The Administrator noted the paperwork included in the agenda package was only a quote and that prior to any work being authorized, the specifications would be put out to bid. She then requested authorization to issue a Request for Bids (RFB) for the reroofing of both buildings.

Deputy Mayor Heine offered a motion to authorize a Request for Bids for the reroofing of the Way Building and City Hall. Councilman Dixon provided a second to the motion, which passed unanimously, 5-0.

**6.B. Driveway Permit for Michael and Judy Cross**

The City Administrator reported on the permit request from the Cross' noting it was an unusual request due to the configuration of their driveway. She briefly explained Mr. and Mrs. Cross were requesting an exception and that if approved, the driveway would not meet all setback requirements as defined in the Code. The Administrator added that neighboring property owners were not in opposition to the request and that inspectors had determined there would be no problem with the flow of traffic, encroachment, and the like.

Deputy Mayor Heine made a motion to approve the driveway permit and the motion was seconded by Councilwoman Goodman. However, following discussion and prior to a vote, both the motion and its second were withdrawn.

**PAGES # 7345 - 7350  
ARE NOT INCLUDED  
IN THIS BOOK DUE TO  
A PRINTING ERROR.  
THE MINUTES OF THE  
OCTOBER 3, 2009 COUNCIL MEETING  
ARE 29 TOTAL PAGES IN LENGTH  
BUT EXTEND HERE FROM  
PAGE 7321 - 7355**

Councilman Dixon reminded the Council of a similar situation that had occurred a month or so prior which was tabled in order to allow the neighbors to respond in writing as a protective measure to both the City and property owner; and suggested perhaps this request should be handled in the same manner.

The City Attorney also expressed concern, explaining the consideration for an exception would in fact be a quasi-judicial proceeding in the form of a variance also requiring specific procedures for advertising and public hearings. The Attorney recommended the item be tabled before the Council so that it could properly follow the variance process through the Planning and Zoning Board.

**On motion of Councilwoman Goodman and seconded by Councilman Keene, the Council voted unanimously, 5-0, to table the item before them and refer it back to the Planning and Zoning Board for a recommendation.**

#### COMMENTS FROM DEPARTMENTS

##### **7.A. CITY MARSHAL**

The City Marshal began by saying it was indeed a strange time in politics but that he was glad to be re-elected for this third term and that once again, he will be the best he can be for the City hoping to leave a legacy behind. He then briefly covered his September report showing arrest and traffic activities as well as investigations.

The Marshal then reminded Council that during the recent budget cycle, he had traded a vehicle for a Code Enforcement position to handle housing rehab, demolition, clearing and the like; but now is requesting guidance as to how to secure the consultant. He continued that Dr. Ward, of Lonnie Ward, Inc. has been performing limited duties for the past two months recognizing the City was at the end of their fiscal year; yet his request for payment is still outstanding.

Councilman Dixon noted the Council had previously approved the line item as part of the Marshal's FY-10 budget, and therefore it was within his purview as chief law enforcement and code enforcement officer to administer that budget as he sees fit. In short, Councilman Dixon gave the Marshall instruction to "do what you need to do".

Deputy Mayor Heine asked if an invoice had been presented to which the Marshall responded it had.

The City Attorney pointed out the contract between the consultant and the City needs to be approved by the Council and that the Marshall cannot enter into a contract on the City's

behalf on his own accord. It was recommended by the Attorney that at the very least, the Council ratify the contract as presented. Councilman Dixon stated the Council had approved in concept the agreement and funding as part of the budget process and that as the department head the Marshal was entitled to move forward in securing the consultant. Councilwoman Goodman added she saw this item as informational only and that any agreement would be between Mr. Ward and Marshal Lee. Councilman Keenan stated that if the Marshal was seeking guidance from the Council, the message he was hearing was to do what [he] needed to do in order to accomplish the task.

Marshal Lee also reported on a rural grant received that will provide to officers for two years with no match required. He then added that the department had received two vehicles from Collier County which were not new but free, and also a van from FDLE.

On a separate item, Councilman Dixon made a motion to suspend a prior action of the Council which delegated Code Enforcement responsibilities to the City Administrator and revert those duties to the City Marshal. Councilwoman Goodman provided a second to the motion, which carried unanimously, 5-0, upon voice vote.

#### **7.B. CITY ATTORNEY**

The Attorney had no comments.

#### **7.C. FINANCE DIRECTOR**

The Finance Director was available to answer any questions related to the August Revenue and Expense report provided at the dais. She informed the Council she was working to close Fiscal Year 09 as well as posting accruals.

#### **7.D. ADMINISTRATOR**

The City Administrator pointed out the flyer for the Main Street Fall Festival to benefit our troops serving in Afghanistan and Iraq. She also reminded everyone of the Ridge League of Cities dinner this coming Thursday in the City of Frostproof and provided maps for those who will be attending.

She then referenced a letter received from the Minnear's of *Air-cadia* regarding the sale of their lease and the City's first right of refusal to purchase the same. She provided a brief background on the lease and options for the purchase including a broad estimate of payment amortization-to-proceeds scenario.

The Deputy Mayor and Councilman Dixon felt the dollar value was excessive both in terms of the economy and the circumstance of buying back City-owned property. Councilman Keene thought it would be wise to seek guidance from the Airport Advisory Committee or even the City Attorney.

**On motion of Deputy Mayor Heine with a second by Councilman Dixon, the Council voted unanimously, 5-0, to table this item to the next meeting.**

The Administrator noted she had received the City's invitation to the 49th Legislative Conference and distributed it among the Council for their review.

#### OTHER DEPARTMENTS

##### **E.1. ARCADIA MOBILE HOME REPORT FOR SEPTEMBER 2009**

The mobile home report for September was accepted without comment.

#### MISCELLANEOUS/NOTED ITEMS

#### PUBLIC

#### MAYOR AND COUNCIL MATTERS

Councilman Dixon expressed concern over the old fire station (#2) being occupied when it was supposedly closed. He felt the city should lease it in order to generate income and questioned who was using the facility, who had authorized its use and what the future plans for the station are.

The City Administrator responded that she had been approached by the high school about temporarily using the space for a period of two weeks in order to construct a homecoming float; and while she had consulted with the (former) Mayor on the matter, she had authorized the use of that space for a temporary period. Councilman Dixon pointed out no one Councilmember has any more authority or power than another and questioned why the Administrator had consulted only with Mayor Fazzino. The City Administrator stated that the authority to use the building had come from her alone, in her official capacity, and that she was the person who had made arrangements for the students to have a key, water, A/C, etc. She added she felt it was important to support the youth within the community. Councilman Dixon agreed, adding he had no objections to that being the case if the authority lies within her role as Administrator.

Ms. Betty Johnson, 712 S. Monroe Street, questioned who would assume responsibility were there an injury, to which the Administrator answered anyone injured in a public building would be covered by the City and that the general liability insurance is, in part, for that type of coverage.

The City Attorney also confirmed the general liability would be umbrella coverage for any incident. He did add that he would prefer an indemnification be on file and to err on the side of too much coverage rather than too little; but still the City would be covered were there to be an accident or injury. The Attorney also noted he was not aware of a specific delegation of authority within the Code regarding this type of matter but that as the person charged with day-to-day operations of the City, it was certainly within the Administrator's purview to make the call she did.

Councilwoman Goodman stated that Arcadia is a small community and the public will ask their elected officials about various things and while she doesn't want to micromanage, the Council should have been informed in order to address any inquires. Mayor Johnson mentioned he had recently attended a meeting in Palm Beach specifically dealing with Administrators' authority and suggested the Council conduct a workshop to more clearly define the role here.

Councilman Keene made a motion to schedule a workshop at 5 PM on October 20th, 2009 to delineate duties of the Administrator. However following discussion on the date and collection of materials, Councilman Keene amended his motion to reschedule the workshop for 5 PM on Tuesday, November 3rd, 2009. Councilman Dixon provided a second to the motion, which carried unanimously, 5-0.

Councilwoman Goodman suggested incorporating a refresher course on the Sunshine and Ethics Law as well as teambuilding activities in order for the City to move forward. Mayor Johnson agreed, adding the Florida League of Cities would be happy to assist with those topics.

Councilwoman Goodman reported on an ethics violation claim she was involved with, stating that although the [Ethics] Commission had found there to be no basis for the complaint, the claimant had refilled the charges. Dr. Goodman provided copies of the correspondence to the City Recorder and has provided the same to her personal attorney.

Councilman Keene briefly reported on the IEMO training he recently attended and thanked the Council for allowing him to take part in it. He stated he had learned quite a bit about the Sunshine Law, Records Law and Open Meetings requirements.

The Mayor asked the Administrator to provide Councilman Keene with copies of the FLC publications regarding those topics. He also again thanked everyone for their show of confidence adding he will do his best to serve and make Arcadia proud.

Having no further business at this time, the meeting was adjourned at 7:25 PM.

APPROVED THIS 20<sup>th</sup> DAY OF OCTOBER 2009.

By:



Dr. Roosevelt Johnson, Ed.D.

Mayor

ATTEST:



Dana L.S. Williams, CMC, City Recorder