

## REGULAR MEETING

FEBRUARY 1, 2005

A Regular Meeting of the Arcadia City Council was held on February 1, 2005 at 6:00 p.m. in Room D of the Way Building at 23 N. Polk Avenue. Councilmembers attending were: Whitlock, Heine, Fazzone, Goodman and Johnson. Absent: Ms. Way was ill. Also in attendance were: Administrator Strube, Attorney Holloman, City Fire Chief Rutherford, City Marshal Lee, Parks & Recreation Supervisor Waters, Public Works Supervisor Reed, Special Projects Coordinator Hewett, and Recorder Baumann.

Mayor Whitlock called the meeting to order.

The Invocation was given by Council Member Goodman.

Pledge of Allegiance to the Flag.

The minutes of the Regular meeting and Public Hearing of September 20, 2004 were adopted on motion of Johnson; seconded by Heine and carried.

The minutes of the Regular meeting of December 21, 2004 were adopted on motion of Fazzone; seconded by Heine and carried.

Proposed Ordinance No. 915 was presented on first reading. Each Councilmember had previously been given a copy for study. Heine moved to waive the rules and read the proposed ordinance by title only; seconded by Fazzone and carried.

## ORDINANCE NO. 915

AN ORDINANCE OF THE CITY OF ARCADIA, DESOTO COUNTY, FLORIDA, AMENDING SECTIONS 46-3 AND 46-91, OF THE CODE OF ORDINANCES OF THE CITY OF ARCADIA, FLORIDA, TO CONFORM TO EARLY VOTING AT ELECTIONS; AMENDING SECTION 46-173 OF THE CODE OF ORDINANCES OF THE CITY OF ARCADIA, FLORIDA, TO PROVIDE FOR EARLY VOTING AT ELECTIONS; AMENDING SECTION 46-263 OF THE CODE OF ORDINANCES OF THE CITY OF ARCAIDA, FLORIDA, TO PROVIDE FOR THE DATE OF A RUN-OFF ELECTION IN THE EVENT OF A TIE; PROVIDING FOR CHALLENGES OF ELECTORS; PROVIDING FOR CANVASS OF RETURNS OF SUCH BALLOTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Fazzone then moved to approve Ordinance No. 915 on first reading; seconded by Johnson. Mayor Whitlock called for comments from the public, there were none. The motion carried on roll call vote. Ayes: Heine, Fazzone, Goodman, Johnson, and Whitlock. Nays: None.

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Mayor Whitlock issued a Proclamation to encourage all residents to set goals to improve health and wellness as Step Up, Florida is launched. Fazzone moved to endorse this action seconded by Heine and carried.

Pam Ames, President of the Arcadia Main Street Program addressed Council to request the closure of Oak Street for a Car Show. Heine moved to grant the request to close portions of Oak Street on Saturday, February 19, 2005 from 7:00 A.M. to 2:30 P. M. for a Downtown Car Show; subject to approval by Marshal Lee; seconded by Goodman and carried.

Ms. Ames also requests street closure for an event to be held on May 7, 2005. Heine moved to grant the request to close portions of Oak Street on Saturday, May 7, 2005 from 7:00 A.M. to 4:30 P.M. subject to approval by Marshal Lee; seconded by Goodman and carried.

Ms. Ames then requests the use of the parking area north of the downtown pavilion be reserved for visitor parking in conjunction with the Visitor Center/Office operation. She noted that there will be a sign to denote the Visitors Center. Fazzone asked how many spaces would be needed and was informed that there are twenty (20) available. The idea is to use the spaces for parking and not to allow dealers to set up in them as they have done in the past. Fazzone moved to authorize the spaces be used for parking and not for setting up vendor booths; seconded by Heine and carried.

Ms. Ames would like to continue to have the Fourth Saturday Antique Fair which was previously sponsored by the Arcadia Antiques Association. Administrator Strube stated that the Arcadia Antiques Association has declined to sponsor the event because of insurance issues. It was noted that the Main Street Association has a \$2,000,000.00 insurance policy which names the City as additional insured. They will have a list of all participating vendors. Mr. and Mrs. Gerald Newbery are operating as the new managers for the Main Street Association. There was some discussion regarding charging a fee to use the City Streets and sidewalks. Ms. Ames replied that fees collected go to offset advertising costs and the cost for prizes given out at events like the car show. If a store owner does not want a vendor set up in front of their store then the Main Street Association will not assign that location to anyone. Heine moved to authorize the Main Street Association to sponsor the Fourth Saturday Antique Fair subject to the City being named additional insured; seconded by Fazzone and carried.

The Police Department Activity Report for the month of January 2005 was presented. Marshal Lee reported that the City recently had their first homicide in three (3) years.

Marshal Lee then presented a site plan for proposed speed bumps that were approved by Council at their last meeting. The speed bumps must be marked; he suggests that they be marked like the speed bumps on Booker T. Administrator then reported that there are "pre- fab" speed bumps available for an estimated cost of \$1,200.00 per speed bump.

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The pre-fab ones could be moved if needed and would not be as severe as asphalt would be. Council liked the idea of manufactured speed bumps with a total estimated cost of \$6,000.00 along with \$400.00 to \$500.00 for signage for a total of \$10,000.00. Heine moved to authorize the purchase of manufactured speed bumps to be installed as requested by the School Board and that a letter be sent to the School Board requesting assistance with the funding for the speed bumps; seconded by Johnson and carried. Goodman voted no, she was opposed to asking the School Board for funding.

Recorder Baumann requested that Council re-appoint Richard Borsmann to serve as Council's Appointee for a two year term on the Police and Fire Pension Board, said term would expire on November 1, 2006. Heine moved to re-appoint Richard Borsmann to serve as Council's Appointee for a two year term on the Police and Fire Pension Board; seconded by Johnson and carried.

Recorder Baumann then addressed Council to request that they ratify the re-appointment of Karl Lewis to serve as the "Member at Large" on the Police and Fire Pension Board, said term would expire on January 1, 2007. Goodman moved to re-appoint Karl Lewis to serve as the "Member at Large" on the Police and Fire Pension Board; seconded by Johnson and carried.

Recorder Baumann requests that Council acknowledge receipt of the Annual Report of Investment Activity for the Police and Fire Pension Fund. Heine moved to acknowledge receipt of the report; seconded by Fazzone and carried.

Mayor Whitlock addressed Council to notify them that Fire Chief Rutherford has submitted his letter of resignation. Chief Rutherford plans to retire effective September 9, 2005. The current Code authorizes the City Administrator to hire all department heads. The Council only hires the City Attorney and City Administrator. It was noted that Council had previously made a motion which would allow Council to hire the next Fire Chief, it has just become apparent that the motion was not legal based on the City Code. Heine stated that the City Attorney should have informed Council at that time that the motion was not legal. Attorney Holloman noted that he should have made the Council aware that the motion of September 9, 2002 was in conflict with City Code. Administrator Strube believes that the motion was made during the fire merger talks and believes that Council may have wanted more control regarding the merger. Administrator Strube then reported that there have been two (2) fire chiefs hired since he came to the City. The City has an administrative form of government for a reason. Goodman stated that the employees look to the Council for answers and not just to set policy and that staff request the Council to respond on their behalf. Mayor Whitlock stated that if the Council is brought into a situation regarding an employee the issue should be dealt with by the City Administrator first. Johnson reported that if Council had been informed that their previous motion was in conflict to the Code then they would have requested the City Attorney to prepare an ordinance to change the Code. Johnson moved that the Council will interview the next Fire Chief and that the City Administrator

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will be a part of the process by way of a target selection team consisting of the Council and City Administrator; seconded by Goodman. The motion was withdrawn.

Heine hopes to get a list of candidates and that the City would promote from within.

Goodman stated that she has no intention to take power away from Administrator Strube, however Council needs to step up and do the job that they have been elected to do.

Attorney Holloman noted that all meetings must comply with "Government in the Sunshine" as adopted in 1968. Most cities at that time did not have administrators. Attorney Holloman cautioned Council regarding the "Whistle Blowers Act". If the Council hires the Fire Chief and a complaint were to be filed against him it would be very difficult for Council to move forward. Lewis Wells asked if all interviews must be public and was informed yes that they would be held in a public meeting. Administrator Strube noted that none of the potential candidates could speak to the Council if Council decides to move forward in having a say in the hiring of the next Fire Chief. Goodman noted that current school policy has a committee to hire teachers and staff. Johnson moved to hold a work session on February 15, 2005 at 4:00 P.M. to re-write the City Code in order for Council to have a part in the hiring of a new Fire Chief and all department heads; seconded by Goodman and carried. Administrator Strube will have staff send out a reminder about the meeting.

Administrator Strube then addressed Council regarding properties that are damaged beyond repair. He estimates that there are about 100 homes; Fire Chief Rutherford feels that it is more like 200. Heine asked if the City has condemned any of the structures and was informed that they have. Administrator Strube stated that we are now at the point where we can not go any further without jeopardizing funding. Resolution No. 2005-01 was presented to request that Federal Emergency Management Agency (FEMA) approve payment for the removal of hurricane debris from private property. This resolution would pre qualify structures and grant the City a right of entry. Heine moved to adopt Resolution No. 2005-01; seconded by Johnson and carried.

RESOLUTION 2005-01

A RESOLUTION OF THE CITY OF ARCADIA, FLORIDA,  
REQUESTING FEMA APPROVAL AND SUPPORT FOR  
REMOVAL OF HURRICANE DEBRIS FROM CERTAIN  
PRIVATE PROPERTY; SETTING PROCEDURES AND  
REQUIREMENTS

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(Resolution 2005-1 continued)

WHEREAS, as a result of Hurricane Charley and its aftermath, a large number in excess of 200 homes were so severely damaged that, according to professional appraisals, the cost of repair or renovation to make them habitable and conform to building code exceeds the value thereof, making necessary their demolition to avoid their continuing or becoming public nuisances as defined in State law and the ordinances and land development regulations of this City; and

WHEREAS, an overwhelming number of these homes have no or insufficient insurance coverage to allow the owners to fund even the demolition and removal thereof in order to consider replacement, constituting present immediate and potential health and safety hazards and a city-wide threat to the public health and safety; and

WHEREAS, representatives of the Federal Emergency Management Agency (FEMA) have offered to consider funding the removal of these existing and potential health and safety hazards to help alleviate a city-wide threat to the public health and safety so long as certain criteria are satisfied; and

WHEREAS, the City of Arcadia, Florida, has in place ordinance numbers 50-101, 50-102, 50-103, 50-104, 50-105, 50-106, 50-107, 50-108, and 50-109, which provide due process to owners to require owner removal of these dilapidated structures or upon failure, to effect non-consensual removal after which costs to the City of Arcadia, Florida may be recovered; and,

WHEREAS, the enormous cost of this undertaking is prohibitive to the City without assurance of reimbursement from FEMA under the public assistance disaster recovery programs for which the City has thus far qualified under both State and Federal law in accordance with the declarations of disaster and emergency made by the City of Arcadia, Florida, DeSoto County, Florida, Governor of the State of Florida, and President Of the United States.

NOW, THEREFORE, be it resolved by the City Council of the City of Arcadia, Florida:

1. FEMA is hereby requested to give documented approval to the City of Arcadia, Florida, for the cost of removing residential structures damaged by hurricanes covered under the declarations of state of emergency, as such cost is incurred in enforcement of its ordinances 50-101, 50-102, 50-103, 50-104, 50-105, 50-106, 50-107, 50-108, and 50-109, to protect the public from the nuisance threat to public health and safety caused by the continued existence of said dilapidated structures damaged beyond repair.
2. This request is accompanied by the assurance of the City of Arcadia, Florida, that the following process will be followed:

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(Resolution 2005-1 continued)

- a. The owner of the property will first be given notice and opportunity to correct and abate the condition before government expense is incurred.
- b. If the owner does not or cannot effect a correction, the owner will be requested to execute a form that constitutes a written notarized form of right of entry, agreement to hold the government harmless, and agreement to report and pay over any insurance proceeds received by the owner for such loss to reimburse the government for expense of removal. A copy of such form is attached hereto and made a part hereof as Attachment A.
- c. If the owner does not execute such documents voluntarily or is not located, the City will utilize the appropriate ordinance to secure lawful permission for entry and debris removal, securing the cost with a lien against the affected property.
- d. The properties to be processed for debris removal will be jointly selected and approved by both FEMA and the City of Arcadia, Florida, before commencement, which will occur upon execution and delivery to FEMA of:
  1. Written-finding of immediate health safety hazard in substantially the form attached hereto as Attachment B-1 or B-2; and
  2. Written Notice to Proceed in substantially the form attached hereto and made a part hereof as Attachment C.
  3. The Mayor of the City of Arcadia, Florida, is authorized to sign any agreement between the City and FEMA that conforms in substance with this Resolution.

DULY ADOPTED by the City Council of the City of Arcadia, Florida, at their regular meeting held on February 1, 2005.

ATTEST:

CITY OF ARCADIA, FLORIDA

By: /s/ RACHELLE M. BAUMANN  
RACHELLE M. BAUMANN  
CITY RECORDER

BY: /s/ PAUL P. WHITLOCK  
PAUL P. WHITLOCK  
MAYOR

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(Resolution 2005-1 continued)

Approved as to form  
David C. Holloman  
City Attorney

ATTACHMENT A  
CITY OF ARCADIA, FLORIDA RESOLUTION NO. 2005-01

PERMIT AND DECLARATION

RIGHT OF ENTRY, HOLD HARMLESS AND NON-DUPLICATION OF BENEFITS

RIGHT OF ENTRY

I/We, \_\_\_\_\_, the owner(s) of the property commonly identified  
as (address) \_\_\_\_\_

Within the city limits of the City of Arcadia, Florida, do hereby grant and give freely and  
and without coercion, the right of access and entry to said property to the government of  
the City of Arcadia, Florida, its agent, contractors, and subcontractors thereof, for the  
purpose of demolishing and/or removing and/or clearing any or all storm-generated  
debris of whatever nature from the above-described property.

HOLD HARMLESS

It is fully understood that this permit is not an obligation upon the government to perform  
debris removal. The undersigned agrees and warrants to hold harmless the Federal  
Government of the United States of America (to include, but not limited to, the Federal  
Emergency Management Agency), the State of Florida (to include, but not limited to, the  
Division of Emergency Management), City of Arcadia, Florida, a municipality  
corporation, its agents, contractors, and subcontractors for damages of any type,  
whatsoever, either to the above-described property or persons situated thereon and hereby  
release, discharge, and waive any action, either legal or equitable that might arise out of  
any activities on the above-described property. The property owner(s) will mark any  
sewer lines, septic tanks, water lines, and utility lines located on the described property.

NON-DUPLICATION OF BENEFITS

I/We, (have \_\_, have not \_\_)/(will \_\_, /will not \_\_) receive(d) any compensation for  
debris removal from any other source including SBA, ASCS, private insurance,  
individual and family grant program. I will report, for the above-described property, any

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(Resolution 2005-1 continued)

insurance settlements to me or \_\_\_\_\_ any funds received for said services from any of the aforementioned sources. I am fully aware that an individual who fraudulently or willfully misstates any fact in connection with this agreement shall be subject to a fine of not more than \$10,000.00 or imprisonment of not more than one year, or both, for the considerations and purposes set forth herein.

Sworn and Attested:

Print Name: \_\_\_\_\_

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME in \_\_\_\_\_ County, Florida,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Affiant is : Personally known to me \_\_\_\_\_/or Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_

\_\_\_\_\_  
Notary Public. My Commission  
Expires: \_\_\_\_\_

ATTACHMENT B-1

CITY OF ARCADIA, FLORIDA, RESOLUTION NO. 2005-01

Date of Inspection: \_\_\_\_\_

Record Owner of Property: \_\_\_\_\_

Property Address: \_\_\_\_\_

\_\_\_\_\_

Tax Map Parcel No: \_\_\_\_\_

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(Resolution 2005-1 continued)

The undersigned Building Inspector for the City of Arcadia, Florida, has determined that the building(s) and/or structure(s) located on the real property above noted is unfit for human habitation or is unfit for its current use on account of the following conditions arising from the storm and/or tornado occurring on August 13, 2004.

- \_\_\_\_\_ I. Defects therein increasing the hazards of fire, accidents, or other calamities.
- \_\_\_\_\_ II. Lack of adequate ventilation, light, or sanitary facilities.
- \_\_\_\_\_ III. Dilapidation.
- \_\_\_\_\_ IV. Disrepair.
- \_\_\_\_\_ V. Structural defects.
- \_\_\_\_\_ VI. Uncleanliness.
- \_\_\_\_\_ VII. Fire or Storm damage.
- \_\_\_\_\_ VIII. Other \_\_\_\_\_  
\_\_\_\_\_

The building(s) and/or structure(s) requires abatement, razing, and removal in that, as contemplated by O.C.G.A Section 412-9(b)(3)(B), the cost of repair, alteration, or improvement exceeds one-half (1/2) of the value of said building(s) and/or structure(s).

\_\_\_\_\_  
Building Inspector  
City of Arcadia, Florida

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(Resolution 2005-1 continued)

ATTACHMENT B-2

CITY OF ARCADIA RESOLUTION NO. 2005-01

FINDING OF IMMEDIATE HEALTH OR SAFETY HAZARD

The undersigned authorized agent or employee of the City of Arcadia, Florida, has personally inspected the property located at \_\_\_\_\_ Arcadia, Florida, and finds that the storm debris located within 150 feet of the perimeter of the primary residence or business structure thereon, or within 50 feet of the center line of the driveway thereof, constitutes an immediate danger to the health and safety of the citizens of the City of Arcadia, Florida. This finding is based upon the following factors:

- \_\_\_\_\_ Fire Hazard
- \_\_\_\_\_ Impediment to emergency access
- \_\_\_\_\_ Public health hazard due to rotting debris, dead animals, putrescible waste, or breeding of flies and mosquitoes
- \_\_\_\_\_ Pine beetle infestation
- \_\_\_\_\_ Other health or safety hazard
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

This the \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Authorized Agent or Employee

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(Resolution 2005-1 continued)

ATTACHED C

CITY OF ARCADIA, FLORIDA RESOLUTION NO. 2005-01

NOTICE TO PROCEED

DATE: \_\_\_\_\_

This shall serve as a formal task order to \_\_\_\_\_ (removal provider) to proceed with removal of hazardous storm-related debris from properties identified by the designated official of the City of Arcadia, Florida. Operations will be performed within the scope of services for debris removal from private property described within the contract between the FEMA and the City of Arcadia, Florida. Debris removal shall be limited to that debris, which presents a health and safety hazard, as identified 44 CFR 106.224, Debris Removal and agreed upon by the designated representative on-site. All work will be in strict compliance with guidance and eligibility determinations developed by the Federal Emergency Management Agency.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

The Public Works report for the month of December 2004 was presented. Public Works Supervisor Reed then addressed Council noting that the plastic tank is off of the street sweeper and that it is out of commission at this time. They will now be using a broom attached to a tractor to clean the streets.

Fazzone asked if the City intends to run an ad similar to the County's regarding the illegal dumping of trash on the right of ways. Fazzone believes that the Wednesday special trash pickup should be stopped. Public Works Supervisor Reed stated that at this time only appliances and mattress are being pickup. The City has had a problem with not being able to bill residents for extra trash pickup when they say the items were not theirs.

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The City is considering only picking up household garbage and it would be the citizens' responsibility to hire someone to haul away any yard trash, appliances, furniture etc. At this time the City does not have the staff to separate building materials from other items.

Mayor Whitlock does not see how the City can discontinue this service when they have been picking up these items for so many years. Administrator Strube believes that the City will continue to have large amounts of debris until this is over. Johnson moved to authorize the Administrator to place an ad in the local paper regarding illegal dumping; seconded by Fazzone and carried.

The January 2005 report of Arcadia Golf Course receipts and number of play was presented.

Stan Abram with the Arcadia/DeSoto Beautification Committee asked if their group could approve of corporate sponsors to do landscaping and sprinkler work in the City right of ways. Council stated that they did not have a problem with this.

Valerie Gilchrist inquired as to her appointment on the Arcadia Housing Board and was informed by Administrator Strube that we have not received a response from the Ms. Engles the Director of the Housing Authority so no action can be taken at this time.

Ms. Gilchrist then inquired about the lights being repaired or replaced at Martin Luther King Park. Special Projects Coordinator Hewett reported that there will be no reduction in price to install concrete poles due the need for heavy equipment to install them. He estimates it will cost about \$2,000.00 more than originally noted in order to have underground wiring. Johnson moved to authorize that the lights have underground wiring; seconded by Fazzone and carried.

Special Projects Coordinator Hewett then reported that several firefighters helped to install exercise equipment around Lake Katherine.

Mr. Gene Finkler addressed Council to request that Council enter into a twin town/city relationship with the town of Arcadia Louisiana. Mr. Eugene Smith the Mayor of Arcadia Louisiana visited Arcadia during Christmas. Mr. Finkler then reported that there are eleven (11) towns or cities in the United States with the name Arcadia. Heine moved to place Mr. Finkler's request on the February 15, 2005 agenda for discussion; seconded by Fazzone and carried.

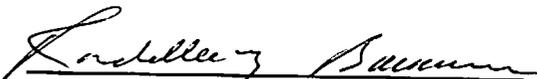
Administrator Strube reported that the Department of Community Affairs has appointed a Long Term Recovery Manager to oversee Charlotte, Hardee and DeSoto Counties. FEMA will also fund a manager for each county.

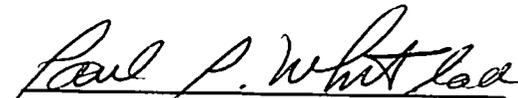
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Goodman asked about the status of Ms. Dwyer's home and was informed that there were permitting issues which held up the project; however it is now moving along. Administrator Strube reported that Grants Coordinator Weeks will be holding the final interviews for applicants for housing rehab work and that the City will receive about 1.4 million to rebuild homes. Mr. Weeks is currently in Tallahassee seeking additional funding for housing.

Heine reported that the street lights are being repaired and noted that the water and sewer are being connected at the new RV Park.

There being no further business the meeting was adjourned.

  
CITY RECORDER

  
PRESIDENT