



Ocala

City Council - Special Meeting

Minutes

110 SE Watula Avenue
Ocala, FL 34471

www.ocalafl.org

Friday, August 5, 2022

12:00 PM

1. Call to Order

a. Welcome and Roll Call

Present: Mayor Reuben Kent Guinn
Pro Tem James P. Hilty Sr
Council Member Barry Mansfield
Council Member Jay A. Musleh
Council President Ire J. Bethea Sr

Excused: Council Member Kristen M. Dreyer

2. Public Notice

a. Public Notice

Public Notice for the August 5 City Council Special Meeting was posted on August 3, 2022

3. Topics for Discussion

a. Appeal to the United States Supreme Court -Rojas et al. v. City of Ocala -American Humanist Case

Assistant City Attorney Patrick Gilligan provided background on the case. He explained drive-by shootings prompted local civic leaders to hold a prayer vigil on the Square. Former Police Chief Greg Graham was asked to sign a letter inviting citizens to the prayer vigil. The letter was posted on the Police Department's Facebook page and a complaint was subsequently filed that the City was in violation of the Establishment Clause. Mayor Guinn, Chief Graham, and the City were all named in the initial complaint; the District Court granted summary judgment for Mayor Guinn, and sided with the plaintiffs for the other two complaints. The Eleventh Circuit upheld the complaint. He explained the American Center for Law & Justice has represented the City in this case for free, and are here to discuss appealing the ruling to the Supreme Court.

Abigail Southerland, attorney with the American Center for Law & Justice, commented this meeting is to discuss the next steps. She noted there is a long history and tradition of government leaders calling for prayer and chaplains leading these vigils across the country. She explained there is a question of standing in this case, and the Supreme Court has held a higher standard in recent years as compared to the lower courts. Council can decide, instead of appealing in the District Court, to file a petition for certiorari to the Supreme Court to review the issue of standing. She noted the plaintiffs have no tax standing in this case, in that there were no City funds used in the event, nor do some of the plaintiffs live within the City and therefore do not pay City taxes. She also explained she believes it to be a very strong case because the

plaintiffs have testified they attended the vigil not to participate, but to protest and witness what they believed to be an Establishment Clause violation. Approximately 40 years ago, the Supreme Court held that would be called "Offended Observer Standing" and outright rejected it. However, the Eleventh Circuit carved out a special exception to this standing, which confused matters.

Ms. Southerland noted there is no guarantee the Supreme Court will grant the request. Most petitions of this type are not granted. However, most petitions filed by ACLJ have been granted. She recommended to Council to take it to the Supreme Court and see what happens. She explained while ACLJ fees are free to the City, should the City lose, it will be responsible for plaintiff's attorneys fees.

Council Member Musleh asked if she knows how much the attorneys' fees might be.

Ms. Southerland stated she doesn't currently. Prior to the Eleventh Circuit appeal, they were claiming approximately \$185,000 in attorney's fees and costs, and she estimated approximately \$30,000 in costs since then. She suggested being prepared to pay up to \$275,000 if the case is decided against the City.

Mr. Gilligan explained if the petition for certiorari is denied by the Supreme Court, it would go back to the District Court to be decided, where the judge would have to reconsider the original ruling under direction of the Eleventh Circuit ruling. If the Supreme Court takes the petition and decides in favor of the City, then the case is over. He discussed the importance of the standing issue as it relates to other cases, including demands to remove "God Be With Us" from the City seal.

Mayor Guinn discussed a conversation with a hotel owner who paid \$30,000 in response to a demand letter from an attorney alleging lack of accessibility in their pool area. He commented on other demands the City has received, such as to remove "God Be With Us" from the police cars, removing the chaplain program from OPD, removing the word "prayer" from events such as the Prayer Breakfast. He recommended to Council to petition the Supreme Court.

Council Member Musleh stated he supports petitioning the court.

Council Pro Tem Hilty stated he supports petitioning the court.

Council Member Mansfield stated he supports petitioning the court.

Council President Bethea concurred. He commented he agrees the City needs to take a stand.

Mr. Gilligan noted he remembers Chief Graham being deposed. In the deposition, Chief Graham recounted the plaintiffs approached him during the vigil and told him they were against the shootings. He asked them if they would like to speak at the vigil and they declined.

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

RESULT: APPROVED
MOVER: James P. Hilty Sr
SECONDER: Jay A. Musleh
AYE: Hilty Sr, Mansfield, Musleh, and Bethea Sr
EXCUSED: Dreyer

Adjournment

Adjourned at 12:29 p.m.