



PORT ORANGE CITY COUNCIL WORKSHOP

Council Chambers

Monday, March 27, 2017 @ 6:30 PM

WORKSHOP AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Workshop** of the City Council to be held for the following purposes:

OPENING

1. Pledge of Allegiance
2. Silent Invocation
3. Roll Call

DISCUSSION ITEMS

4. Feral cat program discussion
5. Right-of-Way License Agreement for Pavers Discussion

ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE; IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 1-800-955-8771.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.

PORT ORANGE POLICE DEPARTMENT PROPOSAL FOR RETURN TO FIELD AND ADDRESSING ISSUES WITH FERAL CAT COLONIES

OVERVIEW

Cat colonies were established in conjunction with Concerned Citizens for Animal Welfare, and was supposed to address the issue of overpopulation. The theory was that there would be caretakers for each colony who would ensure that the cats were spayed and neutered, saving lives and taxpayers dollars. Unfortunately, too many colonies are being established (168 at last count) and many of these colonies are not only reproducing, but are causing damage to private property and becoming a nuisance. These colonies are also being established in residential areas around the city and neighbors are beginning to complain.

The Objective

To find solutions to the existing issues of cat overpopulation and nuisance.

- To educate colony caretakers on rules governing colonies and enforce said rules and city ordinances.
- To create a Return to Field program which would ensure that all cats being trapped are altered and returned.
- To create and/or clarify city ordinances concerning cat colonies, littering, nuisance animals and responsibility for animals.

PROPOSAL

In regards to neighborhood complaints, many colonies are currently in residential neighborhoods and the cats are not being altered. This results in complaints of destruction of private property as well as noise complaints of the cats fighting and/or mating. Two prime examples are the colonies at 3456 Country Walk and 980 Canalview. Animal Control Officers have spent countless hours at both of these locations, fielding complaints from neighbors and trying to handle the issues with the registered colony caretakers. In both instances, the colonies were set up by CCFAW and neither caretaker has adhered to the guidelines governing these colonies. We have feral, unaltered cats wandering around, with more incoming as there is a free and abundant food source, and no one being held accountable. One solution could be to hold colony caretakers legally responsible for not only nuisance but also for the mandatory spay/neuter ordinances now in place (10-19-B). Another solution would be to create ordinances in regards to feeding feral cats. This would be beneficial especially in our commercial areas and

public spaces where there are no assigned caregivers and could also address the issue where wildlife is being fed. I have attached CCFAW paperwork, including the contract that caretakers sign as well as the procedures for maintaining colonies. It would be helpful if CCFAW could provide us with copies of their signed contracts so that we may begin to hold caretakers responsible.

A few other issues found with cat colonies are the fact that sometimes caretakers move or unfortunately pass away, and the cats are left to fend for themselves. With no established caretaker these cats begin to roam and cause a nuisance to the neighbors. One colony near Philly's Diner has this current dilemma. The neighbors want the cats removed, but we cannot as they are on private property. The neighbors did state that if these cats were altered it would probably make things easier as the cats would calm down. Another issue we have found recently are caretakers who state that they have either A) never signed paperwork with CCFAW or B) state that they never signed up, just asked for information about the program and now we are trying to hold them responsible. Again if CCFAW could provide us with the required information, it would go a long way towards recognizing who is actually a caretaker and who isn't. Animal Control Officers will be contacting all 168 colonies on our list to begin to address this question.

CCFAW are not the only organization creating colonies. We have discovered another group by the name of Furry Nation, but as far as we can tell they are only doing spay/neuter, not feeding. We also have random citizens feeding throughout the city and creating "colonies" with no governance from POACO or CCFAW. If we could establish city ordinances governing colonies and feeding of feral cats, I believe this would help with the problem.

The cat population is not only growing because of feral cats. We have numerous residents throughout the city who do not spay and neuter their personal cats and also allow them to roam free. If they are trapped by neighbor or in public city traps we could add them to the return to field program. We do educate cat owners as we find them on our city ordinances, and we have begun to issue citations to those who do not comply with the ordinance. I would propose that we also become more proactive (as time permits) by stopping at residences where we see cats lying in yards to educate those owners either verbally or with some sort of literature.

In regards to the return to field program, many organizations around the country have found positive results. Volusia County Animal Control has been using this program for over a year now and they have seen a dramatic decrease in not only the number of calls being handled, but the amount of money being saved by not taking these cats to the humane society. It is a very simple program where any and all cats trapped would be taken to the Redinger Clinic in Daytona Beach instead of the local humane society. These cats would be altered, given shots and have their ears clipped to identify them and returned to where they were trapped. This would result in a cost much lower than what we are being charged by the Halifax Humane Society. The return to

field costs are as follows: female cats are \$50 and males are \$35. We are currently being charged \$85 per animal at the Halifax Humane Society. This program has the added benefit of controlling the cat population as well as saving lives, since feral cats are humanely euthanized. We have been told by CCFAW that we could use their appointments at the Redinger clinic to have our cities animals altered. We have a minimum of five appointments per day that we could be utilizing. We currently average 5-8 cats per week (\$425-\$680 at HHS), but we could be trapping on city property such as our parks, to help control those populations. All that would be required is an investment into a few more traps that could be utilized by Animal Control Officers. These traps have a price of approximately \$53 and we would only need about five to utilize on a daily basis (\$265 total).

I have also included a contract from Southeast Humane Society for consideration. They are a smaller organization and charge less money for the intake of animals. The only cats we would need to take to them would be kittens too young for surgery and any cats that are too sick for surgery. Any cats that are already altered would be released at the site where they were trapped.

EXPECTED RESULTS

We expect our proposed solution to provide the following results:

- An overall decrease in the feral cat population.
- A decrease in the number of calls responded to by Animal Control Officers.
- A means of holding caretakers legally responsible for nuisance animals and to ensure all animals in their care are altered.
- A decrease in the amount of money spent by our taxpayers.

Though some of these results will not manifest themselves for several years, we believe this to be a step in the right direction.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/27/2017

Consent item: No

SUBJECT: (5) Right-of-Way License Agreement for Pavers Discussion

DEPARTMENT: City Attorney

GOAL: 2 - Infrastructure

RECOMMENDED MOTION:

SUMMARY:

At the February 21, 2017, City Council Meeting there was a discussion related to the utilization of Right-of-Way License Agreements for homeowners that want to install pavers in the City-owned Right-of-Way. The main questions that came out of this discussion were, "Is the amount of insurance required on the license agreement enough to protect the City?" and, "What data do we have on past liability related to paver sidewalks and aprons adjacent to driveways?"

Since 2008, forty-seven (47) Right-of-Way License Agreement applications have been received and thirty-nine (39) applications relating to the installation of the pavers have been issued. The remainder are in a pending status or the application was withdrawn.

The license agreement allows the homeowner to install pavers past their property line into the City owned Right-of-Way to include (in some areas) crossing over an existing concrete sidewalk. Approximately twenty (20) of the approved agreements involve installation of pavers in the sidewalk area.

To answer the questions posed by Council there are several subjects that need to be addressed:

RISK

Since 2009, the City has not experienced any claims directly related to paver sidewalks or aprons. However, this is a matter of probability. The percent of paver sidewalks versus concrete sidewalks is so small, the probability of someone tripping on the pavers versus concrete is extremely small. If there is a significant increase in the number of paver sidewalks, the probability that someone will trip on them would increase. The same is true with the amount of sidewalks. The more you have, the larger the chance that someone will trip. We have seen an increase in recent years on the number of trip and falls on City sidewalks.

Most of the cities that staff surveyed do not allow pavers in the sidewalk and therefore do not have information specifically related to the increased risk due to pavers in the

sidewalk.

Staff also asked reputable insurance brokers who have indicated that paver sidewalks would potentially increase risk, and recommended that they not be installed in the sidewalk area. Therefore, there may be an increased risk of having paver sidewalks and aprons, but the magnitude of this risk has not been quantified.

INSURANCE

The current license agreement requires the homeowner to acquire at least \$25,000 of homeowner liability insurance if they install pavers into the City rights-of-way (sidewalk and apron). Staff contacted reputable insurance brokers to determine what an adequate amount of insurance would be to protect the City. The broker indicated that homeowners' policies do not extend beyond the property line and are unable to be altered to add additional insureds.

The broker indicated a homeowner could buy additional liability insurance to cover the liability created by installing pavers in the public right-of-way; however, they are not aware of anyone who offers such a policy, and if you could find such a policy, it would likely carry a hefty premium of \$500 or more per year, which would need to be maintained in perpetuity so long as the pavers remain in the public right-of-way.

Thus, regardless of the amount of coverage a homeowner has on his/her home, the protection would not extend to the City.

LICENSE AGREEMENT

As discussed on February 21st, there is significant management burden on managing the license agreement process. Our license agreements are personal to the individual applicant and do not run with the land. Therefore, city staff is required to follow the ownership of the properties in this program. When properties change hands, staff must track down the new owners and renew the license agreement. The more homes there are with license agreements, the more time we would need to spend tracking property transfers. If this program is not adequately managed, the City could potentially inherit the risk and maintenance related to the pavers.

MAINTENANCE

Currently we require homeowners maintain the paver sidewalks and aprons they install. However, experience (in other areas) has shown that someone else's idea of proper maintenance may not be sufficient from the City's perspective. If the City were required to maintain paver sidewalks and aprons, it would increase the time and expense to the city to do so. The additional amount and time required is not known at this time, but it is clear that inspecting a paver sidewalk for possible safety hazards would take more time and resources than inspecting a concrete sidewalk.

RECOMMENDATION

Staff does not recommend allowing pavers in the City right-of-way due to liability concerns, increased administrative time and cost to maintain the license agreement process properly, and increased costs for inspection and maintenance.

Approximately 20 of the current paver driveways have included pavers in sidewalks and aprons. Staff recommends giving these homeowners a reasonable amount of time to

replace the paver sidewalk and apron with concrete per the City's standard construction detail for driveways and sidewalks.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Summary to Council From Legal	Summary to Council re Paver License Agreements.pdf
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Robin Fenwick	Created/Initiated - 03/08/2017
Jamie Miller	Approved - 03/09/2017
Matthew Jones	Approved - 03/17/2017
Branford Adumuah	Approved - 03/17/2017
Wayne Clark	Approved - 03/17/2017
Alan Rosen	Approved - 03/17/2017
Robin Fenwick	Final Approval - 03/17/2017

MEMORANDUM

To: Mayor Donald Burnette
Vice Mayor Bob Ford
Councilman Drew Bastian
Councilman Scott Stiltner
Councilman Chase Tramont

Cc: Jake Johansson, City Manager
Wayne Clark, Director of Community Development
Margaret Tomlinson, Construction & Engineering Manager

From: Margaret T. Roberts, City Attorney

Date: February 7, 2017

Re: Paver License Agreements

Summary of Legal Issues – For this discussion on Licenses in the right of way, first consider that liability generally follows the ownership of the property and the contractual rights, if any. Liability may be insured or shifted by legal documents.

Ownership may include:

- Public – The city controls the ownership interest on behalf of the public. The public's interest may appear in a dedication or a specific grant for public purposes. Public purpose may include the following:
 - R/W as land reserved for public use, unless restricted to private uses.
 - Aesthetics arguably serve a public purpose. Some may argue pavers do not increase aesthetics of the community.
- Property Owners Association – The developer's Restrictive Covenants may be imposed on real property and may include requirements for the association to maintain certain development features in the right of way, including landscaping, sidewalks, irrigation and other improvements that enhance the real property development. The maintenance of the real property by an association can be standardized for aesthetic consistency throughout the development as compared with an individual property owner's maintenance schedule or techniques.
- City – The city may own real property that is unrestricted and unlimited for the city's use and purpose, except for the requirements of law, ie. zoning and other federal, state and local laws relating to real property ownership.

Liability

An insurer is limited to writing insurance coverage for and “insurable interest” ie. ownership or contractual interests in the land and an insurer may decline to insure or exclude coverage for risky activities.

- Since a license agreement does not transfer ownership, the City may be subject to liability claims for injuries resulting from negligent installation/maintenance of improvements, repair or replacement located in the R/W.
- Some mitigation of liability is achieved through the License Agreement.
 - Property owners agree to maintain.
 - Some maintenance responsibilities are non-delegable (unable to be delegated to others) (i.e. ADA Compliance).
 - Property owner agrees to indemnify the city in the event of injury (may require enforcement litigation and is limited by the property owner’s financial strength).
 - Property owner is required to be maintained insurance by the property owner (\$25k).
 - Homeowner’s policies cannot add City as additional insured.
 - \$25k is much less than statutory cap that may be imposed against City (\$200/300k).
 - Some Homeowner insurers may not cover injuries extending beyond the property boundaries.

Administration of License Agreements

- Tracking
 - City maintains a comprehensive list of all license agreements granted by City Council regardless of type (i.e. pavers, signage, landscaping, etc.)
 - No annual review of license agreements is performed to verify continued ownership of property where the license was originally established.
 - Change of ownership may occur without City’s knowledge.
 - New owner would not be bound by the previous owner’s license agreement, and thus mitigation of liability through agreement would be lacking.
- Insurance
 - No annual review of insurance coverage conducted.
 - Insurance may change or be removed without City knowledge.

Liability may be shifted to another legal person or entity by the following means:

- Ordinance as a matter of law – By example, since late 1990, the city ordinances have required new developments to record documents establishing that the

- association is responsible for the ownership and maintenance of storm water drainage improvements.
- Contract – The license agreement does not convey ownership. The License is a type of contract where the property can be obligated to maintain certain improvement placed in the right of way. The contract obligation can be secured by some insurers if the contract is provided to the insurer and specifically referenced as a contractual coverage under a general liability policy.
 - Transfer of the ownership rights – Not legally recommended for most right of ways. A right of way may not be sold for valuable consideration. Ownership equates to control the most legally effective means of control of the ownership interests in the real property.