

MAYOR
Shirley Sessions

CITY COUNCIL
Barry Brown, Mayor Pro Tem
John Branigin
Jay Burke
Nancy DeVetter
Spec Hosti
Monty Parks



CITY MANAGER
Dr. Shawn Gillen

CLERK OF COUNCIL
Jan LeViner

CITY ATTORNEY
Edward M. Hughes

CITY OF TYBEE ISLAND

AMENDED AGENDA

REGULAR MEETING OF TYBEE ISLAND CITY COUNCIL

September 24, 2020 at 6:30 PM

Please silence all cell phones during Council Meetings

Consideration of Items for Consent Agenda 6:30PM

Opening Ceremonies

- Call to Order
- Invocation
- Pledge of Allegiance

Announcements

Recognitions and Proclamations

1. Recognition: Department of Natural Resources
2. Recognition: Ga State Patrol
3. **Recognition: Polly Wylly Cooper and Joy Davis**

Consideration of the approval of the minutes of the meetings of the Tybee island City Council

4. Minutes, City Council Meeting September 10, 2020

If there is anyone wishing to speak to anything on the agenda other than the Public Hearings, please come forward.

Consideration of Approval of Consent Agenda

Consideration of Bids, Contracts, Agreements and Expenditures

5. Agreement: City of Tybee Island and GMA: Telecommunications and Right of Way Management

Consideration of Ordinances, Resolutions

6. Resolution: HB 1203 Repealing Parts of Citizen Arrest Powers

Council, Officials and City Attorney Considerations and Comments

7. Bubba Hughes: Ante Litem: Michael Lucas, Kathleen Flynn and other Similarly Situated Persons

P.O. Box 2749 – 403 Butler Avenue, Tybee Island, Georgia 31328-2749
(866) 786-4573 – FAX (866) 786-5737
www.cityoftybee.org



Executive Session

Discuss litigation, personnel and real estate

Possible vote on litigation, personnel and real estate discussed in executive session

Adjournment

Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities are required to contact Jan LeViner at 912.472.5080 promptly to allow the City to make reasonable accommodations for those persons.

***PLEASE NOTE:** Citizens wishing to speak on items listed on the agenda, other than public hearings, should do so during the citizens to be heard section. Citizens wishing to place items on the council meeting agenda must submit an agenda request form to the City Clerk's office by Thursday at 5:00PM prior to the next scheduled meeting. Agenda request forms are available outside the Clerk's office at City Hall and at www.cityoftybee.org.



THE VISION OF THE CITY OF TYBEE ISLAND

"is to make Tybee Island the premier beach community in which to live, work, and play."



THE MISSION OF THE CITY OF TYBEE ISLAND

"is to provide a safe, secure and sustainable environment by delivering superior services through responsible planning, preservation of our natural and historic resources, and partnership with our community to ensure economic opportunity, a vibrant quality of life, and a thriving future."

File Attachments for Item:

Recognition: Department of Natural Resources

RANK	NAME	LAST NAME	DEPARTMENT
Captain	Chris	Hodge	Department of Natural Resources
Sergeant	Mark	Carson	Department of Natural Resources
Sergeant	Cindy	Miller	Department of Natural Resources
Corporal	Barry	Britt	Department of Natural Resources
Corporal	Kiel	Toney	Department of Natural Resources
Corporal	Rtandy	Aspinwall	Department of Natural Resources
Corporal	Bobby	White	Department of Natural Resources
Corporal	Tim	Hutto	Department of Natural Resources
GWFC	Douglas	Chambers	Department of Natural Resources
GWFC	Tim	Morris	Department of Natural Resources
GWFC	Judd	Sears	Department of Natural Resources
GW	Quintin	Reed	Department of Natural Resources
GW	Chandler	Hamrick	Department of Natural Resources
GW	Bobby	Sanders	Department of Natural Resources
GW	Cassidy	Gerstorff	Department of Natural Resources
LT Colonel	Chris	Wright	Headquarters, GaSP
Major	Billy	Hitchens	Headquarters, GaSP
Captain	Chad	Riner	Headquarters, GaSP
Captain	Thornell	King	Troop 1 Command, GaSP #19
LT.	Chris	Rodewolt	Troop 1 Command, GaSP #52
S/TPR	Quincy	Melvin	Troop 1 Command, GsSP #P11
SFC	John	Crews	Nighthawks South, GaSP #395
SGT	Dustin	Stone	Nighthawks South, GaSP #168
CPL	Jamie	Quinn	Nighthawks South, GaSP #430
TFC	Adam	Denton	Nighthawks South, GaSP #435
TFC	Richard	Bell	Nighthawks South, GaSP #529
TFC	Erik	Lawrence	Nighthawks South, GaSP #611
TFC	Zachary	Parker	Nighthawks South, GaSP #899
TFC	Caleb	Wickstrom	Nighthawks South, GaSP #907
TFC	Dante	Williams	Nighthawks South, GaSP #911
SFC	Chris	Nease	Post 42, Rincon, GaSP #642
SGT	Richard	Sikes	Post 42, Rincon, GaSP #605
CPL	Joseph	Curlee	Post 42, Rincon, GaSP #504
TFC	Jon	Champion	Post 42, Rincon, GaSP #150
TFC	Kane	Smith	Post 42, Rincon, GaSP #165
TFC	Hunter	Waters	Post 42, Rincon, GaSP #324
TFC	Steven	Harris	Post 42, Rincon, GaSP #374
TFC	Matthew	Nelson	Post 42, Rincon, GaSP #380
TFC	Daniel	Chernich	Post 42, Rincon, GaSP #696
TFC	Zachary	Montano	Post 42, Rincon, GaSP #900
TFC	Adam	Massey	Post 42, Rincon, GsSP #902
TFC	Glen	Walters	CIU, GaSP #P11
TFC	Hunter	Oglesby	CIU, GASP #P45
TFC	Joshua	Janufka	CIU, GaSP #P42
	Jamey	Holloway	Post 45, Statesboro GaSP #213
Captain	Blair	Hanton	MCCD Region 7, GaSP #7017

LT	Randy	Wickstrom	MCCD Region 7, GaSP #7107
SFC	Walter	Wrighton	MCCD Region 7, GaSP #7737
SGT	Jeremy	Maybin	MCCD Region 7, GaSP #7777
MCO3	Tom	Wall	MCCD Region 7, GaSP #7642
MCO2	David	King	MCCD Region 7, GaSP #7784
MCO2	Turner	Cameron	MCCD Region 7, GaSP #7529
MCO3	Bryan	Collins	MCCD Region 7, GaSP #7530
MCO2	Joshua	Bell	MCCD Region 7, GaSP #7532
MCO2	Timmons	Tomlin	MCCD Region 7, GaSP #7713
SFC	Minis	Hillis	MCCD Region 7, GaSP #7597
SGT	Kevin	Harkleroad	MCCD Region 7, GaSP #7526
MCO3	Michael	Clements	MCCD Region 7, GaSP #7543
MCO3	Randy	Martin	MCCD Region 7, GaSP #7544
MCO2	Michael	Henderson	MCCD Region 7, GaSP #7577
MCO2	Humberto	Eugenio	MCCD Region 7, GaSP #7583
MCO3	Gerald	Huff	MCCD Region 7, GaSP #7622
MCO2	Jeremy	Coward	MCCD Region 7, GaSP #7724
MCO2	Matthew	Morris	MCCD Region 7, GaSP #7576
MCO2	Matthew	Kennedy	MCCD Region 7, GaSP #7686
MCO2	Austin	Volkert	MCCD Region 7, GaSP #7650
MCO1	Brandon	Lumley	MCCD Region 7, GaSP #7545
MCO1	Justin	Price	MCCD Region 7, GaSP #7508
MCO1	Erin	Holloway	MCCD Region 7, GaSP #7718
SFC	Patrick	Sapp	MCCD Region 7, GaSP #7527
SGT	Kyle	Williams	MCCD Region 7, GaSP #7531

File Attachments for Item:

4. Minutes, City Council Meeting September 10, 2020

Consideration of Items for Consent Agenda

Mayor Sessions called the Consent Agenda to order at 6:30PM. Those present were Jay Burke, Monty Parks, John Branigin, Barry Brown, and Spec Hosti. Also attending were Dr. Shawn Gillen, City Manager; Bubba Hughes, City Attorney; Tracy O'Connell, Assistant City Attorney; George Shaw, Director, Community Development; and Janet LeViner, Clerk of Council. Nancy DeVetter attended via Zoom.

Mayor Sessions listed the following items on the consent agenda:

- Minutes, City Council Meeting, August 27, 2020
- Addendum No. 2 to Master Services Agreement No. 60826, MCCI.
- Software License Agreement: Thomas and Hutton Corporation dba geothinQ
- Thomas & Hutton, Professional Civil Engineering Services Contract (Collection of Sanitary Sewer Collection System Data)
- MOU between USCG Station Tybee and Tybee Island Fire Department
- Granicus Software Management Contract - STVR's

Mayor Sessions called the regular meeting to order. All those present for the consent agenda were present.

Opening Ceremonies

- Call to Order
- Invocation: Rev. June Johnson, All Saints Episcopal Church
- Presentation of Colors and Pledge of Allegiance

Recognitions and Proclamations

Mayor Sessions asked **Mack Kitchens** to approach the podium where she read a **Certificate of Appreciation** to acknowledge his bravery in rescuing a young lady in distress in the water. The Honorable Buddy Carter also presented Mr. Kitchens with a personal thank you letter. Mr. Kitchens thanked everyone for the recognition.

Citizens to be Heard.

Jenny Rutherford approached Mayor and Council to speak on **Transferrable Parking Passes**. Ms. Rutherford stated the property at 17th Street has had parking passes for a number of years and were able to be purchased through the City equal to the cost of one yearly parking pass. She feels that due to her not being able to purchase the decals at the reduced price as in the past, is unconstitutional. She asked Mayor and Council to reconsider. Mayor Sessions thanked Ms. Rutherford and understands her frustration. Council was asked to submit their concerns to the City Manager who has the authority to make the decision. Mayor Sessions asked Ms. Rutherford to resubmit her paperwork as it seems she is appealing the City Manager's decision. Ms. Rutherford confirmed.

Monty Parks made a motion to approve the consent agenda. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Public Hearings

Variance: requesting setback encroachment – 409 Tybrisa Street – 4000812010 – Zone R-2 – Paul Murach. **George Shaw** approached Mayor and Council. Mr. Shaw stated there was a contract to build the home and a separate contract for installation of a pool. During

the construction of the pool, issues were discovered concerning the soil and the pool was moved and went into the set-back. This was not discussed with the City and it was not noticed until the as-built was recently received. The pool sits 1' into the set-back. Staff is recommending denial and the Planning Commission recommended 3-2 for approval. Mr. Parks stated the Planning Commission recommended approval but with a \$1,000 fine. Mr. Shaw confirmed and added the fine would be at the discretion of the Judge. Mayor Sessions asked if the City has an ordinance that addresses an after-the-fact variance to include penalties and procedures. Mr. Hughes responded, Sec 5-090, LDC, has a sub-section that at one time prohibited anyone who had a structure that was in violation of the Code from applying for a variance until the structure was brought into compliance. The ordinance was later amended to provide the applicant must offer a written explanation and could apply for a variance if the property was out of compliance. Mr. Hughes continued, the Code section is clear in sub-section (f) of 5-090, and requires a written explanation of how it came to be that a structure was built in violation of the Code which was provided to the Planning Commission by Mr. Murach. Mr. Hosti asked if Mr. Murach could build a higher fence since the pool is in the setback. Mr. Shaw stated a 4' fence is required around all pools with lockable gates. Mayor pro tem Brown asked if the explanation was done prior to the pool being fully built? Or after? **Paul Murach** approached Mayor and Council. Mr. Murach stated neither the pool contractor nor the general contractor believed, when they moved the pool slightly due to the soil conditions, they were still within the set-back and this was not discovered until July 27, 2020. Mayor pro tem Brown stated he feels this is a problem between the contractors and owner of the property. It is their responsibility to correct the problem. Mayor Sessions asked Mr. Shaw the reasoning behind Staff's denial. Mr. Shaw stated the conditions for denial are clear as there must be a hardship created by the lot shape, size, etc. but the lot was fully developed and the pool is a luxury and accessory to the house. He feels it does not fit the definition for a variance. Mayor Sessions asked if there is a process the City does to insure the permit that was applied was built correctly. Mr. Shaw responded, the site plan shows the pool 5' from the property line and after construction they received an as-built of the property showing the pool 4'1" and 4'3" from the property line. Mayor pro tem Brown shared his concerns with no site visits done during construction. Ms. DeVetter stated she is in agreement with the Planning Commission regarding a fine. She asked Mr. Hughes what is the maximum fine that can be imposed. Mr. Hughes responded \$1,000 which could include court costs as it is the general penalty for violating provisions of the Code where no specific penalty is provided. Ms. DeVetter asked if anyone has been cited as of yet. Mr. Shaw responded no not as of yet. Mr. Parks agreed with Mayor pro tem Brown regarding the blame as it is not Mayor and Council's problem. Mr. Murach stated he is trying to find a solution for the issue. Mayor Sessions asked Mr. Murach and his family have moved into the residence. Mr. Murach responded the property is a rental, STVR, and the reality is without the variance the property cannot be sold. The pool was put in for medical reasons as his son has special needs but now he needs to sell the residence. Mr. Murach stated he does not have confidence in either contractor for them to speak to Mayor and Council at the public hearing that is why he came in from Atlanta. He is looking for a middle ground to satisfy the City and not put his family in an undue hardship. Mr. Branigin asked if the home was built in 2018 why was the as-built was not submitted until July 2020. Mr. Shaw responded, the City has requested not only the as-built but other documents and they were received in his office. He continued, a Certificate of Occupancy (CO) has not been issued. Due to an error at City Hall, a permit for water service was issued. Ms. DeVetter asked if the residence has been rented. Mr. Shaw confirmed even without a CO. Mr. Murach stated the contractor told him the City had issued a CO and he applied for a Business License which was approved as well. When the issues were found in July 2020, Mr. Murach stated he collected all the items Mr. Shaw needed such as surveys, drainage certification, height certification, etc. that Mr. Shaw needed and when Staff evaluated the paperwork he was informed the pool was 11" over the set-back and need a variance. **Anthony Kirk Malcom, 409 McCloud Avenue**, approached Mayor and Council. Mr.

Malcom stated he owns the adjacent property. He continued that his wife does not have an issue with the variance but he feels there is a problem as everyone needs to follow the rules. He asked Mayor and Council to do the right thing. Mayor Sessions thanked Mr. Malcom. **Peter Hand**, adjacent neighbor, approached Mayor and Council. Mr. Hand thanked Mayor and Council for all the time they have spent on public protection. He continued, in looking what has transpired he feels the foundation for the home is a spread foundation therefore causing problems especially with three stories. In reviewing the Code, Mr. Hand stated there is a process for approving pools, having a separate permit to be reviewed by an engineer and recommend or not recommend. He is asking Mayor and Council to deny this request as it is disrespectful to those applicants that have followed the Code. Mr. Murach apologized as there was never a willful attempt to break any law or harm anyone at the City and asked Mayor and Council to approve the variance request. **Monty Parks** made a motion to deny. **Barry Brown** seconded. Voting in favor to deny were Monty Parks, Barry Brown, Jay Burke, and Nancy DeVetter. Vote against were Spec Hosti and John Branigin. Vote to deny, 4-2.

Consideration of Bids, Contracts, Agreements and Expenditures

American Tower: Request for lease adjustment. No Action Taken. To be heard September 24, 2020.

Verizon: 4th Amendment to Lease Agreement. No Action Taken. To be heard September 24, 2020.

Consideration of Ordinances and Resolutions

Second Reading, 2020-13, Disorderly Household and Administrative Fine Offenses.

Mr. Hughes stated this is second reading on the ordinance that addresses violations of the disorderly house ordinance. It does two things: (1) makes the ordinances that apply to houses of any type, administrative civil penalties as opposed to ordinance violations that are prosecuted so they are handled administratively and (2) also makes those applicable to the provision of the disorderly house ordinance that has what is commonly called the three strike rule which can result in potential additional penalties. **Monty Parks** made a motion to approve. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Second Reading, 2020-19, Mask/Face Covering in City Buildings Operated by the City.

Mayor Sessions stated Dr. Gillen asked Mayor and Council to craft and approve the ordinance to ensure the safety of all Staff. **Barry Brown** made a motion to approve. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

Council, Officials and City Attorney Considerations and Comments

Monty Parks: Establish a Fine for Rentals without Registration. To be discussed at a later City Council Meeting. For introduction only.

Monty Parks: Increase in Annual Liquor License Renewal Fees. To be discussed at a later City Council Meeting. For introduction only.

Shawn Gillen approached Mayor and Council to discuss the **Retirement Incentive**. **Dr. Gillen** stated there is two pieces to this item. The first is the early retirement and the other is a retirement incentive. The early retirement takes time and GMA is working on the Resolution and ordinance changes to allow Staff to early retire under the Rule of 75. The other is the incentive. There are currently six (6) Staff currently eligible and five (5) who would be eligible for early retirement. The retirement incentive would apply to everyone. This would be a \$10,000 payout plus 18 months of COBRA coverage for single health care coverage. The window of opportunity would close with the early retirement option. It will be open for 45 days from the date Mayor and Council approve the change. It should close in mid-December. Mayor pro tem Brown asked

how Dr. Gillen would handle the vacancy with regard to institutional knowledge. Dr. Gillen stated the employee could be brought back on a contract level. **John Branigin** made a motion to approve. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

George Shaw approached Mayor and Council to ask for consideration to **a return to normal crossover approval process and fees**. Mr. Shaw stated when the dune build process was started as the City is the one building the dunes, to make it simpler for residents who have not been able to walk straight to the beach this process was put in place. The public hearing process and fee was waived i.e., no special review but still needed a building permit. Mr. Shaw is asked Mayor and Council for an end date to the approval process. Mayor Sessions asked how many people have taken advantage of this program. Mr. Shaw responded only one, the Desoto Hotel. **Monty Parks** made a motion to "return to the normal process". **Barry Brown** seconded. Vote was unanimous to approve, 6-0.

Spec Hosti made a motion to adjourn to Executive Session to discussion Litigation, Real Estate and Personnel. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

Monty Parks made a motion to adjourn to Regular Session. **Barry Brown** seconded. Vote was unanimous to approve, 6-0.

Barry Brown made a motion to adjourn. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Meeting adjourned at 8:35PM.

Janet R. LeViner, MMC
Clerk

File Attachments for Item:

5. Agreement: City of Tybee Island and GMA: Telecommunications and Right of Way Management



EXHIBIT A

GEORGIA MUNICIPAL ASSOCIATION
FEDERAL WORK AUTHORIZATION PROGRAM COMPLIANCE AFFIDAVIT

By executing this affidavit, the Georgia Municipal Association, Inc. ("GMA") verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that GMA, which is engaged in the physical performance of services in Georgia, has registered with, is authorized to use and uses the federal work authorization program commonly known as E-verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, GMA will continue to use the federal work authorization program throughout the contract period and will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. §13-10-91(b). GMA hereby attests that its federal work authorization user identification number and date of authorization are as follows:

69371
Federal Work Authorization User Identification Number

November 26, 2007
Date of Authorization

Telecommunications and Right of Way Management
Name of Project

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 15, 2020, in Atlanta (city), Georgia (state).

Larry H. Hanson
BY: GMA Authorized Officer or Agent

1-15-20
Date

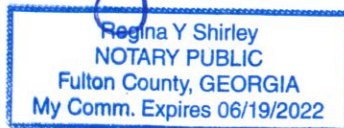
Larry H. Hanson, Executive Director
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE 15 DAY OF January, 2020

Regina Y. Shirley
Notary Public

My Commission Expires:



SEAL

AGREEMENT BETWEEN
THE CITY OF TYBEE ISLAND
AND
THE GEORGIA MUNICIPAL ASSOCIATION, INC.
FOR TELECOMMUNICATIONS & RIGHT OF WAY MANAGEMENT

WHEREAS, the City of Tybee Island (“City”) desires to provide regulation and oversight of cable television and other telecommunications services being provided to the citizens of the City;

WHEREAS, the Georgia Municipal Association, Inc. (“GMA”) has available a telecommunications and right of way management program; and,

WHEREAS, the City has a need for such telecommunications and right of way management program.
THEREFORE, THE CITY AND GMA AGREE AS FOLLOWS:

Section 1. Services Provided to the City of Tybee Island

GMA agrees to provide, either directly or through its agents or subcontractors, the following consulting services, (all of which are explained more fully below) which are to be known as GMA’s Telecommunications and Right of Way Management Program:

- a) Local Franchise Management, as more fully described in Section 2 of this agreement;
- b) State Issued Franchise Management, as more fully described in Section 3 of this agreement;
- c) Cellular Tower and PCS Tower Site Consultation Services, as more fully described in Section 4 of this agreement;
- d) Franchise Compliance Monitoring Services as more fully described in Section 5 of this agreement.
- e) Right of Way Ordinance Development as more fully described in Section 6 of this agreement.

Section 2. Local Franchise Management

Local Franchise Management shall include assisting the City with the following:

- a) Facilitating the City’s compliance with the 1984 and 1992 Federal Cable Acts, the Telecommunications Act of 1996 and the rules of the FCC affecting municipal regulation of cable and video service providers;
- b) Regulating cable rates for basic service, equipment and installation, and performing rate analysis to determine compliance with the Federal Communications Commission (“FCC”) rate regulations, if the City is a rate regulator;
- c) Evaluating and responding to requests for approval of franchise grant, transfer, modification or renewal;

- d) Recommending and developing customer service standards for cable and video service providers; and
- e) Assisting with Public Educational and Government Channel (PEG) development and implementation issues.

Section 3. State Issued Franchise Management

State Issued Franchise Management shall include assisting the City as needed with the following based on O.C. G. A. 36-76-1 *et seq.*:

- a) Reviewing requests for state issued franchises submitted to the Secretary of State’s Office to provide service within the city’s corporate limits, including facilitating the Secretary of State’s procedural processes related to the franchise fee percentage for a holder of a state issued franchise;
- b) Assisting with Public Educational and Government Channel (PEG) development and implementation issues;
- c) Reviewing requests for transfers of state issued franchises submitted to the Secretary of State’s Office for service provided within the city’s corporate limits; and
- d) Assisting with customer complaints rules as established by the Governor’s Office of Consumer Affairs.

Section 4. Cellular and PCS Tower Site Consultation Services

Cellular and PCS and Tower Site Consultation Services shall include:

- a) Negotiating agreement between the City and any cellular or PCS provider for use of the city’s property by the provider;
- b) Advising Cities on the provisions of tower site agreements for the use of public land;
- c) Informing Cities concerning federal policies related to siting of wireless technologies; and
- d) Referring Cities to engineering or other professional resources on an as needed basis.

Section 5. State and Local Franchise Compliance Monitoring Services

Franchise compliance monitoring services shall include systematically reviewing the cable operator’s or video provider’s compliance with the terms of certain aspects of a local or state issued franchise agreement to encompass the following:

- a) Upon receipt of revenue report forms from the city, monitor compliance with the definition of “gross revenue” and assist with recovery of any identified underpayments;
- b) Periodically perform a review of the franchisee’s books and records to determine compliance with the definition of gross revenue and assisting with recovery of any identified underpayment;

- d) Reviewing funding or other issues related to the government channel, tower rental fees or pole agreement fees if applicable;
- e) Documenting operator's carriage of appropriate insurance coverage;
- f) Checking and documenting the status of system construction timeframes, if applicable;
- g) Handling and resolving subscriber complaints as referred;
- h) Monitoring operator's adherence to federal, state or local customer service standards;
- i) Notifying Cities of any identified areas of noncompliance and resolution of same or notification that the operator was found to be in compliance;

Section 6. Rights of Way Ordinance Development

- a) Review existing Rights of Way Ordinance to determine City's current rights of way practices;
- b) Review existing permit process and other ordinances that impact use and restoration of the rights of way;
- c) Evaluate current Rights of Way practices and recommend changes; and
- d) Provide updated Rights of Way Ordinance based on the unique needs of the City

Section 7. Other Services

In addition to the services outlined above, the City may obtain technical performance auditing of a cable operator or telecommunications company and technical assistance in the development of public, educational and governmental access channels and institutional networks as well as engineering consulting services concerning cellular tower siting. These other services may be obtained from GMA, its agents, employees or subcontractors. The parties to the agreement may execute an addendum or addenda to this agreement for the City to obtain such services; provided, however, the additional fee for each such additional service shall not exceed \$10,000.

Section 8. Effective Date, Renewal and Termination.

- a) This Agreement shall terminate absolutely and without further obligation on the part of the City at the close of the Calendar year in which it was executed and at the close of each succeeding Calendar year for which it may be renewed as provided for herein.
- b) This Agreement shall commence as of _____, 20____. It is automatically renewed for successive one-year calendar terms thereafter, unless terminated by either GMA or the City by giving 30 days advance written notice of such termination to the other party. GMA shall be entitled to payment for services rendered to the City, including compensation due for additional services rendered to the City, including compensation due for additional services reasonably substantiated by GMA as of the effective date of termination.

- c) The total obligation of the City under this Agreement for the calendar year of execution shall initially be \$1,741.60 and **will be prorated during the first day on the month in which the agreement commences**. The total obligation of the City which will be incurred in each Calendar year renewal term shall be reflected in an annual invoice to be submitted to the City thirty (30) days prior to the due date. The invoice shall state the total amount of obligation for the upcoming year exclusive of amounts for any Other Services as the City may elect to obtain through the provisions of Section 7 of this agreement. The rendering of services by GMA or its subcontractors to the City after any renewal of this Agreement for such services shall result in additional obligations for the City.

Section 9. Hold Harmless

Each party shall bear the responsibility for liability for negligence, errors or omissions of its own officers, agents, employees or subcontractors in carrying out this agreement. To the extent permitted by law, the City holds harmless GMA for liability for the negligence of the City, its officers, agents, employees, or subcontractors arising out of this agreement. GMA holds harmless the City for the negligence of GMA, its officers, agents, employees, or subcontractors arising out of this agreement. No agency relationship created for other purposes including but not limited to workers compensation and employee benefits and neither party or their officers, agents or employees shall be deemed employees of the other party.

Section 10. Agency

In addition by executing the attached Agent Representation Form the City designates GMA, its officers, agents, employees, and contractors as agents of the City for purposes of Section 635A of the Communications Act of 1934, as amended, the applicable provisions of the Local Government Antitrust Act of 1984 and O.C. G. A. 36-76-1 *et seq* known as the Georgia Consumer's Choice for Television Act of 2008.

Section 11. Amendments

This contract may be amended by future written agreements executed on behalf of the City and GMA.

Section 12. Georgia Security and Immigration Compliance Act

GMA attests compliance with the requirements of O.C.G.A. §13-10-91 and Rule 300-10-1-.02 by the execution of the contractor affidavit attached as Appendix A as shown in Rule 300-10-1-.07, or a substantially similar contractor affidavit, which document is attached to and made a part of this contract as Exhibit A.

GMA agrees that, in the event GMA employs or contracts with any subcontractor(s) in connection with the covered contract, GMA will secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit shown in Rule 300-10-1-.08 or a substantially similar subcontractor affidavit, and maintain records of such attestation for inspection by the City at any time.

Section 13. Law Applicable.

Section 14. Consulting Services

None of the services provided pursuant to this agreement shall be regarded or treated as the practice of law or accountancy.

EXECUTED ON BEHALF OF THE CITY OF TYBEE ISLAND THIS _____ DAY OF _____, 20____.

ATTEST:

CITY OF TYBEE ISLAND:

City Clerk

By: _____
Authorized Signatory, Title

APPROVED AS TO FORM:

City Attorney

GEORGIA MUNICIPAL ASSOCIATION, INC.

By: _____
Larry H. Hanson, Executive Director

A RESOLUTION OF THE CITY OF TYBEE ISLAND THROUGH THE COUNCIL TO AUTHORIZE THE MAYOR OF SAID CITY TO EXECUTE A TELECOMMUNICATIONS & RIGHT OF WAY MANAGEMENT PROGRAM AGREEMENT

WHEREAS, the City of Tybee Island desires to regulate the provision of cable television and other telecommunications management services so as to assure that the citizens of said City receive quality service;

WHEREAS, the Georgia Municipal Association has available a telecommunications and right of way management program to assist the City in such regulation;

NOW THEREFORE BE IT RESOLVED, that the Mayor of the City of Tybee Island is hereby authorized to execute a telecommunications and right of way management program agreement on behalf of the City, in substantially the same form as Appendix A which is attached to and made a part of this resolution.

RESOLVED by the Mayor and Council of the City of Tybee Island this _____ day of _____, 20__.

ATTEST:

By: _____
City Clerk

Mayor: _____
City of Tybee Island

(SEAL)

**Georgia Municipal Association
Telecommunications and Right of Way Management Program**

AGENT REPRESENTATION FORM

The undersigned is a participant in the Georgia Municipal Association's (GMA) Telecommunications and Right of Way Management (TRM) program. GMA's TRM program provides assistance with all aspects of federal and state cable and video franchising, including but not limited to franchise renewals and modifications, state franchise application process, franchise fee reviews and customer service issues. As a participant in GMA's TRM program, authorization is hereby granted to allow GMA's staff and/or subcontractors to act on the Participants behalf as listed above.

This AGENT REPRESENTATION FORM is effective upon date signed and until further notice.

Name of City, Town or County

Street Address

City

Zip Code

Phone #

Fax #

Email Address

Submitted By – Print Name

Title

Signature

Date

File Attachments for Item:

6. Resolution: HB 1203 Repealing Parts of Citizen Arrest Powers

RESOLUTION 2020 ____

A RESOLUTION TO SUPPORT HOUSE BILL NUMBER 1203 CALLING FOR THE ABOLISHMENT OF GEORGIA LAW PERMITTING CITIZEN ARREST WITH CERTAIN LIMITATIONS

WHEREAS, the City of Tybee Island, in the interest of public safety acknowledges that recent events have demonstrated potential risk arising from the ability of a private citizen to make an arrest under certain circumstances and therefore the law authorizing such conduct should be repealed or modified; and

WHEREAS, House Bill 1203 proposes to repeal Article 4 of Chapter 4 of Title 17 of the official Code of Georgia annotated; and

WHEREAS, the City of Tybee Island supports the effort to have debate in connection with the potential repeal of Georgia law permitting arrest by private persons; and

WHEREAS, the City of Tybee Island would encourage the consideration of not repealing a merchant or "shopkeeper" retaining the ability to detain suspected shoplifters as recognized in O.C.G.A. 51-7-60.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Tybee Island that the City supports House Bill 1203 and Representative Gilliard's efforts in reference to limiting the ability of private arrest however, the City also believes that the provisions of O.C.G.A. 51-7-60 should not be impacted by the potential repeal of Article IV of Chapter 4 of Title 17 of the official Code of Georgia.

IT IS SO RESOLVED, this ____ day of _____, 2020.

CITY OF TYBEE ISLAND, GEORGIA

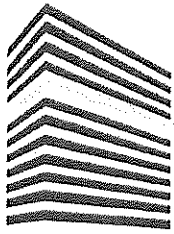
By: _____
SHIRLEY SESSIONS, Mayor

Attest:

City Clerk

File Attachments for Item:

7. Bubba Hughes: Ante Litem: Michael Lucas, Kathleen Flynn and other Similarly Situated Persons



SAVAGE
TURNER
DURHAM
PINCKNEY
AND
SAVAGE

BRENT J. SAVAGE
ROBERT BARTLEY TURNER
JAMES D. DURHAM
KATHRYN HUGHES PINCKNEY
BRENT J. SAVAGE, JR.
R. BRIAN TANNER
SHANNON C. O'REILLY
ZACHARY R. SPROUSE
SAMUEL L. MIKELL
WINSTON A. EDWARDS
CAROLYN M. ADAMS

August 20, 2020

VIA CERTIFIED US MAIL
RETURN RECEIPT REQUESTED

Edward "Bubba" Hughes, Esq.
City Attorney
Tybee Island City Hall
403 Butler Avenue
Tybee Island, Georgia 31328

**Re: Our Clients: Michael Lucas, Kathleen Flynn and other Similarly
Situated Persons v. City of Tybee**
Ante Litem Notice of Potential Litigation O.C.G.A. §36-33-5
Place of Loss: Tybee Island Beach
Date of Loss: March 25, 2020; March 29, 2020
Municipal Entity: City of Tybee

Dear Sir and Madam,

Please be advised that this firm represents Kathleen Flynn and Michael Lucas, as representatives of a putative class of all other similarly situated plaintiffs in connection with the illegal closure of the Tybee Island Beach. This closure caused Michael Lucas, Kathleen Flynn, and others so similarly situated financial detriment and loss. I am attaching copies of the citations incurred by both Mr. Lucas and Ms. Flynn.

As you are likely well aware, the beach located along the edge of Tybee Island is regulated by the State of Georgia and is legally owned by the citizens of the State of Georgia.

On March 20, 2020, the City of Tybee illegally closed access to the state-owned beach in response to the growing COVID-19 Pandemic. The City of Tybee did not and does not have the right to close the state-owned beach. Each aforementioned client was restricted from exercising their rights to access the beach.

On March 25, 2020, Michael Lucas exercised his right as a citizen and resident of the State of Georgia and visited the beach at Tybee Island. While Mr. Lucas was on the beach, near the Lighthouse Point Condominiums, he was approached by an officer with Tybee Island Police Department who then wrote him a ticket for being on the beach. It was only later that Mr. Lucas realized he was actually cited with "Disorderly Conduct".

102 E. LIBERTY ST. | 8TH FLOOR SAVANNAH GEORGIA 31401
P|912.231.1140 F|912.232.4212

P.O. BOX 10600 SAVANNAH GEORGIA 31412
savageandturner.com

On March 29, 2020, Kathleen Flynn walked down her privately owned easement to the beach for her morning prayers. Ms. Flynn is a resident and citizen of the State of Georgia and therefore has a right to access the State-owned beach at any time, as permissible by the State of Georgia. As she was heading back up her privately-owned easement, she noticed a Tybee Island Police vehicle approaching. Ms. Flynn then waited for the vehicle to approach her so that she could ask for clarification of the recent beach closure's effect on Tybee residents. Ms. Flynn has been a healthcare professional for a number of years and was concerned about out of town guests congregating on the beach. When she tried to ask the officer for clarification, she was cited with misdemeanor "Disorderly Conduct" and was fined \$1000.00.¹

Pursuant Tybee Island Municipal Code Section 42-60, "Disorderly conduct shall consist of any act which tends to or creates a disturbance of the peace and quiet of the public or community or of any person, class of persons, or of conduct which tends to cause or provoke a breach of the peace or corrupt private or public morals, or which is vile, obscene, degrading or immoral. Any of these acts of misconduct shall be punishable even though not committed in public, in effect thereof might cause or provoke disorder or disturbance to the public or persons offended or affected thereby." The code section goes on to provide eleven (11) other specific circumstances in which actions constitute disorderly conduct.

In the present matter, it is all too clear that no such violence, destruction, abuse or obscene language occurred on March 29, 2020. Furthermore, that while disorderly conduct is a misdemeanor, the fine affiliated with the citation given to Ms. Flynn was for a felonious amount. Traditionally, in the State of Georgia, citations for misdemeanors only carry with them fines less than \$1000.00, while felony fines are in excess of \$1000.00.

Upon information and belief, there are many other so situated persons. Persons who were improperly restricted from beach access, who were improperly detained by police, and who were improperly cited with "Disorderly Conduct" for exercising their personally held rights to visit the State-owned beach. As a result of this improper detention and citation by the Tybee Island Police Department, each of the named and unnamed potential plaintiffs were required to attend Municipal Court, whilst in the middle of a pandemic. Many of these individuals will also likely be charged a "fee"² in excess of \$1000.00.

The purpose of this correspondence is to satisfy O.C.G.A. § 36-33-5 and all other Georgia statutes regarding ante litem notice. Additionally, this notice is given to afford you the opportunity to investigate this claim, ascertain the evidence, and avoid unnecessary litigation.

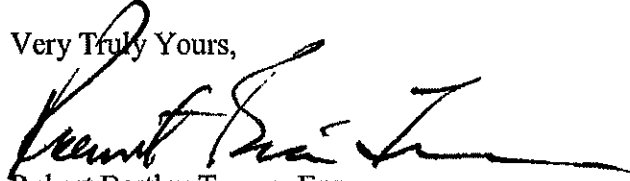
¹ Traditionally in Georgia, misdemeanors are violations with fines of less than \$1000. Fines of \$1000 or more are reserved for felony violations.

² Since the "prosecution" of these alleged Disorderly Conduct Citations has begun, the Tybee Court has adopted a term for the amount charged. Rather than calling it a "fine" the \$1000 misdemeanor is now a "fee" and can only

As a result of the City of Tybee and Tybee Island Police Departments improper exercise of police power and improper Potential Named Plaintiffs, Michael Lucas and Kathleen Flynn have suffered injury in the amount of \$200,000.00 each. The total potential class affiliated with this issue has incurred damages in the amount of \$10 million as a result of the City of Tybee's reckless abuse of the legal system.

This notice is also being sent to you via certified mail, return receipt requested, as prescribed under the aforementioned statute.

Very Truly Yours,



Robert Bartley Turner, Esq.

RBT/ cma

Enclosures

cc: Mr. Michael Lucas

Ms. Kathleen Flynn

ORDER TO APPEAR

TYBEE ISLAND POLICE DEPT
P.O. BOX 1340 PH. 912-786-5635
TYBEE ISLAND, GA 31328-1340
PAY AT: WWW.TYBEEISLANDTX.COM

017513

Docket No. 202001174

Name Lucas Ulchrei
Last First

Address 61 S. ...
Middle

City, State, Zip ... Island
Ph

Employer _____ Ph _____

DOB 8/21/33 / 1 / 1
Race Ht. Wt. Hair Eyes Sex

DL# _____ State GA Exp. Date _____

The undersigned states that on or about

3/25/20 at 357 m. at Beach / to JHHS
Mo Day Yr Location

the person named above did unlawfully commit the following offense(s):

Disorderly Conduct

In violation of: _____

The undersigned, on oath, says that the facts set forth above are true in substance and in fact.

Dated 3/25/20 [Signature] 1418
Mo Day Yr Officer's Signature Id No.

YOU ARE HEREBY ORDERED TO APPEAR AT:

Court TYBEE ISLAND MUNI. COURT Ph 912-786-5635

Address 78 VAN HORNE

City/State/Zip TYBEE ISLAND, GA 31328

On 7/7/20 Yr. at 3:30 m.

I agree to appear in court on the above date

Signature [Signature]
(This is not a plea of guilt)

OFFICER

ORDER TO APPEAR

MEMPHIS POLICE DEPT.
P.O. BOX 480000, 912-786-6000
715 WEST COLLETT AVENUE
MEMPHIS, TN 38101-4800

018980

Name _____ Docket No. _____
 Last First Middle
 Address _____ Ph _____
 City, State, Zip _____
 Employer _____ Ph _____
 DOB ____/____/____ Race ____ Ht. ____ Wt. ____ Hair ____ Eyes ____ Sex ____
 DL# _____ Number _____ State _____ Exp. Date _____

The undersigned states that on or about

____/____/____ at _____ m. at _____ Location
 the person named above did unlawfully commit the following
 offense(s).

In violation of: _____

The undersigned, on oath, says that the facts set forth above are true in substance and in fact.

Dated ____/____/____ Mo. Day Yr. Officer's Signature _____ ID No. _____

YOU ARE HEREBY ORDERED TO APPEAR AT:

Court _____ Ph _____
 Address _____
 City/State/Zip _____
 On ____ Yr. ____ at ____ m.

I agree to appear in court on the above date

Signature _____ (This is not a plea of guilt)

VIOLATOR