

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 7:30 p.m. by Mayor John A. Buckley.

1. Council Member Pat Poole gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Cheryl Palmer	Vice Mayor, District 5
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Loretta Isenberg-Hand	Council Member, District 6
	Henry J. Hill	City Manager
	Paul R. Gougelman	City Attorney
	Cathleen A. Wysor	City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Zoning Administrator

Mayor Buckley reported that due to the size and complexity of this agenda, the Downtown Melbourne rezoning item will appear on the August 14 agenda. He noted that this was announced at the last Planning and Zoning Board meeting.

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the May 2001 Beautification Award to Ms. Sonja Madsen, Community Manager, on behalf of Hidden Harbours.

Later in the meeting, Mayor Buckley recognized Boy Scout Troop 224 from Suntree.

5. APPROVAL OF MINUTES - July 10, 2001

Moved by E. Palmer/Poole for approval. Motion carried unanimously.

6. CITY MANAGER'S REPORT

Following a brief discussion, Council established September 4 and September 18 as the public hearing dates for the budget.

Mr. Hill reported that the Legislative Delegation will meet on September 18. A legislative priorities item will appear on the August 14 agenda for action. He asked Council to review the current year program in anticipation of the next meeting.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

7. PUBLIC COMMENTS

Mike Segebarth, 21 Edgewood Drive, stated that he believes Council Member Poole is doing her duty as a citizen and job as a Council Member. He noted that during some meetings he has attended, some of the Council Members have been inconsistent, rude, disrespectful, have not followed the spirit of Robert's Rules of Order, and displayed boredom during speeches. He described the Council's role in a council-manager form of government and asked all members to keep this in mind when executing their duties.

Linda Metzkwow, representing D. L. White and Associates, reported that their office located at 3700 North Harbor City Boulevard, Suite 1E, experienced a sewage backup on April 29. They were forced to relocate because of the damage. Michael Caruso (Maintenance Foreman) with the city authorized the gutting of the building and removal of office contents at the city's expense and liability. She stated that, as instructed, they contacted Risk Manager Ken Gray. She noted that the communication with Risk Management has been poor and the city has not exercised its promises in a timely manner. She concluded by stating the office remains uninhabitable and expenses have not been reimbursed. She asked Council to expedite the reimbursement process.

Mayor Buckley indicated that staff will investigate and respond.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Request for approval of financial assistance for non-profit organizations for FY 2001-2002. (Postponed by Council 6/26/2001)

At the June 26 Council meeting this item was postponed to allow the organizations requesting funding an opportunity to attend and answer questions. For the purpose of preparing the budget for the next fiscal year, Council established a \$100,000 funding level. There are 13 financial proposals totaling \$171,095. The agenda package includes a brief synopsis of the various proposals received.

Mayor Buckley indicated that the organizations not asking for additional funding should not be required to make a presentation (Honor America, Community Services Council, and American Association of Retired Persons). By consensus, Council agreed.

Loretta Vargas-Betancourt, President, Melbourne Community Orchestra, distributed a supplemental package of information to Council. She stated that they are requesting \$5,200 to pay and retain the services of the music director and conductor, Witold Dobrzynski. Ms. Betancourt explained the services provided by the orchestra and elaborated on their program.

Robert O. Bauer, representing the officers and directors of the Melbourne Municipal Band, explained that they are requesting funds (\$12,240) to help with maintenance of the building and salary for the conductor, Mr. Cristy. Mr. Bauer explained the programs offered by the band and noted that they provide 22 free concerts throughout the year.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Brad Smith, President, and Lynn Brockwell-Carey, Executive Director, Brevard Neighborhood Development Coalition, provided a brief overview of their activities as a Community Development Corporation. They explained that their strategies are aimed at revitalization of impoverished neighborhoods through partnership efforts. Their request of \$10,000 would be used to match funds and in-kind services contributed by Board Members and the Executive Director. The BNDC is ready to join the revitalization efforts underway in the Booker T. Washington Subdivision. Two early action projects include design and construction of three gateway projects into the neighborhood and house painting.

Mr. Smith and Ms. Carey responded to questions about the corporation and the planned projects.

Wendy Brandon, President, Board of Directors, Brevard Regional Arts Group (Henegar Center), discussed their request for \$25,000. The funding would support the community through utilization, maintenance, and improvements of the facility. She noted that when the city helps the Henegar Center, it is also helping dozens of other non-profit organizations. She explained that recently the center adjusted its fees in order to accommodate Meals on Wheels. The Henegar Center has a reputation as a first class affordable facility – not just for the performing arts, but for social services as well. Ms. Brandon closed by pointing out that they contribute to the city's budget through payment of the utility tax.

Pam Fitzgerald, President, Board of Trustees, Brevard Museum of Art and Science, stated that they are requesting \$25,000 to provide arts education and cultural activities to our citizens. They would like to expand the art in the park program to the University Park area and provide 46 "City of Melbourne days" a year to allow residents to be admitted to the museum at no charge. She stressed that the museum is a valuable community resource and funding would allow them to continue their collaborative efforts.

In response to Mrs. Poole, Ms. Fitzgerald said she hopes the museum is able to stay in the Eau Gallie area – especially in view of the recent redevelopment efforts. Mrs. Poole stated that she would like the museum to stipulate that it would return the funding if it leaves Melbourne.

Jennifer Wolf, Phoenix Production Company, noted that their request (\$20,000) would help produce the award-winning Broadway musical, "Gypsy," at the Henegar Center. She explained that since 1989 they have produced over 80 plays with affordable ticket prices. The contribution would help pay for the orchestra, conductor, and rent. She added that Boeing has recently donated \$5,000 and Florida Today has provided \$1,500 in advertisement space. She asked Council to support the production company on its first request to the city.

Wayne Torpy, Vice-President of the Board of Directors, Big Brothers/Big Sisters, spoke in support of their request for \$35,000. He explained that their primary focus is to provide

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

mentors for children throughout Brevard County who need good role models. This year they are expanding their program in the schools. Funds will be used to increase from seven schools to 17 schools. The mentors will provide guidance and coaching for the kids; therefore, their request should be viewed as an investment.

Mr. Torpy responded to specific questions regarding how mentors are selected and trained and the background investigation process. He confirmed that the background investigation is not done through the Melbourne Police Department.

Linda Lawrence, Crisis Services of Brevard and Susanne Sparling, United Way, spoke in support of the request by Crisis Services for \$6,600. The funding will be used to support the operation of a “211” access information system. Often people do not know what organizations in Brevard County provide services. There are no federal or state funding dollars for these initiatives. They are the first in the state and eighth in the nation to embark on this special program.

Ms. Sparling confirmed that they are requesting funding from all of the cities and the amount requested is based on population.

Fran Delisle, Executive Director, Brevard Symphony Orchestra, asked Council to donate the rental fees for the Auditorium and support their request for \$4,000. The financial assistance would help them with stage, lights, and sound equipment for the Fourth of July concert for Front Street Park. She noted that others use the stage and sound system throughout the day and the event draws people from many areas.

Sue Small, representing the Florida Wildlife Hospital and Sanctuary, said that their funding request (\$3,600) would help them care for Florida wildlife and migratory birds. The number of patients is increasing each year, which means their expenses are increasing.

In response to Mr. Contreras, Ms. Small said there are expenses for professional staff; however, they have over 500 volunteer hours donated per month.

Mayor Buckley referenced the matrix distributed and said Council needs to reach consensus on the donations. Mrs. Palmer said that as a representative of the tax payers of the city, she would like to stay within the limit (\$100,000) established by Council. Mayor Buckley agreed and said he is hoping to stay well below that amount.

Mrs. Walker pointed out that it costs the city money to maintain the Auditorium and various other facilities. It is a drain on the city’s revenues to do everything that is asked. Mrs. Poole said the problem is determining where to draw the line. Our “one time” donations have continued to grow. She added that she believes our citizens – the tax payers – contribute on their own and would prefer to select the organizations that receive funding.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Mayor Buckley said last year the Brevard Regional Arts Group was given a one-time grant of \$30,000. The most he would be willing to consider this year is \$10,000. He added that would also be his recommendation for the Brevard Museum of Art and Science. Regarding the Phoenix Production Company, he stated that the city should not get in the position of supporting plays. If someone comes before the city and requests funding to produce an erotic play, the city would have no basis of turning that down.

Mrs. Walker said she recalls from a previous meeting that the Phoenix Production Company made about \$35,000 on that one play, based on how much they charge for tickets. Mrs. Poole recalled the “Oh! Calcutta! mess” and said the city doesn’t need to get into that again.

Regarding Big Brothers/Big Sisters, the Mayor said they have requested three to four times more than the amount he would consider. Crisis Services has asked for something useful and the Space Coast League of Cities has asked the cities to provide support.

Mrs. Palmer agreed with limiting the large requests. She added that after tonight, she hopes we can revisit this issue and limit the amount per organization, the number of consecutive years grants can be made, along with developing some objective criteria. Regarding the request for funding for the “211” service, she said when she attended seminars on homelessness, every helping organization present expressed the need for a central referral service that could guide people to the help that is available. The cities and the county will share the cost.

Mrs. Hand said she would like to see money go to Brevard Neighborhood Development Coalition. The city is trying to revitalize the Booker T. Washington area and \$10,000 would be a good start. She added that she would support \$12,000 for Big Brothers/Big Sisters.

Mr. Contreras expressed support for the Brevard Neighborhood Development Coalition, especially since they are coming in with private funding and will act as a funnel for state and federal dollars. That would relieve some of the burden from the city.

Mr. Palmer recommended the funding level for Honor America remain the same; fund \$10,000 for the museum with a stipulation that the money be returned to the city if they leave Melbourne; forget the Phoenix Production Company because they can operate without funding from the city; start Big Brothers/Big Sisters with \$10,000; start Crisis Services with \$5,000 because they perform a tremendous function for the city; delete the request by the Brevard Symphony Orchestra because we provide in-kind services and they receive funding from the Tourist Development Council for the Fourth of July event; provide \$2,800 for the wildlife hospital; and fund AARP at \$3,568.

Mrs. Poole stated that each organization using the Auditorium should not receive an increase, especially with the maintenance costs that the city is facing. She added that the Brevard Neighborhood Development Coalition is probably a good thing, but there are Community Development Block Grants available. We are all familiar with the Booker T.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Washington area, but there is enough going on in that area now without adding to it. She added that her concern is services may begin to overlap.

At this point, Mayor Buckley called for a recess to allow each Member to complete the funding form.

Recessed: 8:44 p.m.

Reconvened: 8:57 p.m.

Each member submitted their form to the City Clerk, who read the results as follows:

ORGANIZATIONS	Contreras	E. Palmer	Poole	Walker	Hand	C. Palmer	Buckley
Honor America	11,100	11,072	11,072	11,072	11,072	11,072	11,072
Melbourne Community Orchestra	5,200	5,000	5,000	5,200	5,200	5,000	5,200
Community Services Council	10,000	9,815	9,815	12,000	9,815	9,815	9,815
Melbourne Municipal Band	12,300	12,000	11,301	11,301	12,000	10,000	12,000
Brevard Neighborhood Development Coalition	10,000	5,000	0	5,000	10,000	10,000	5,000
Brevard Regional Arts Group	10,000	15,000	10,000	10,000	25,000	10,000	10,000
Brevard Museum of Art and Science	12,800	10,000	10,000	10,000	10,000	10,000	10,000
Phoenix Production Company	0	0	0	0	5,000	0	0
Big Brothers, Big Sisters	10,000	10,000	10,000	10,000	12,000	5,000	5,000
Crisis Services of Brevard	6,600	5,000	5,000	5,000	6,600	4,000	6,600
Brevard Symphony Orchestra	4,000	0	0	0	3,000	0	2,000
Florida Wildlife Hospital and Sanctuary	4,000	2,800	2,800	2,800	3,000	3,000	3,200
American Association of Retired Persons	4,000	3,568	3,568	3,568	3,568	3,568	3,568

Mr. Hill read the ranges recommended by Council in each category. The following action was taken:

Honor America

Moved by Contreras/Poole to provide \$11,072. Motion carried unanimously.

Melbourne Community Orchestra

Mrs. Poole's motion to provide \$5,000 did not receive a second.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Moved by Hand/C. Palmer to provide \$5,200. Motion carried. Mrs. Poole voted nay.

Community Services Council

Moved by E. Palmer/Hand to provide \$9,815. Motion carried unanimously.

Melbourne Municipal Band

Moved by Contreras/C. Palmer to provide \$12,240. Motion carried. Mrs. Poole voted nay.

Brevard Neighborhood Development Coalition

Moved by Contreras/Hand to provide \$10,000. The roll call vote was:

Aye: Contreras, Walker, and Hand

Nay: E. Palmer, Poole, C. Palmer, and Buckley

Motion failed.

Moved by E. Palmer/C. Palmer to provide \$5,000. The roll call vote was:

Aye: E. Palmer, C. Palmer, and Buckley

Nay: Contreras, Poole, Walker, and Hand

Motion failed.

Moved by Contreras/Hand to provide \$7,500. The roll call vote was:

Aye: Contreras, E. Palmer, Walker, Hand, C. Palmer, and Buckley

Nay: Poole

Motion carried.

Brevard Regional Arts Group

Moved by Poole/Contreras to provide \$10,000. Motion carried. Council Members E. Palmer and Hand voted nay.

Mr. Palmer and Mrs. Hand stated that they voted nay because the funding should have been more.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Brevard Museum of Art and Science

Moved by E. Palmer/Poole to provide \$10,000 with a provision that if the museum leaves Melbourne during the fiscal year of funding, the money will be returned. Motion carried unanimously.

Phoenix Production Company

Moved by E. Palmer/Walker to provide zero. Motion carried. Mrs. Hand voted nay.

Big Brothers/Big Sisters

Moved by Contreras/E. Palmer to provide \$10,000. Motion carried. Mayor Buckley and Council Member Poole voted nay.

Crisis Services of Brevard

Moved by C. Palmer/Hand to provide \$6,600. The roll call vote was:

Aye: Contreras, E. Palmer, Hand, C. Palmer, and Buckley

Nay: Poole and Walker

Motion carried.

Brevard Symphony Orchestra

By consensus, Council agreed to continue with the waiver of the Auditorium fees. Mayor Buckley asked for a motion on the financial support.

Moved by Poole/E. Palmer to provide zero. The roll call vote was:

Aye: E. Palmer, Poole, C. Palmer, and Buckley

Nay: Contreras, Walker, and Hand

Motion carried.

Florida Wildlife Hospital and Sanctuary

Moved by Contreras/C. Palmer to provide \$3,000. Motion carried. Mrs. Poole voted nay.

American Association of Retired Persons

Moved by E. Palmer/Poole to provide \$3,568. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Attorney Gougelman announced that the total amount funded for the 2001-2002 year is \$88,995.

9. SITE PLAN APPROVAL (SP-2001-03): A request for site plan approval for an apartment complex (student housing) and a parking garage/lot on a 10.22-acre portion of the Florida Tech campus, zoned I-1 (Institutional), located west of Babcock Street, south of Ruffner Road and east of Country Club Road. (Owner, applicant, representative: Florida Institute of Technology/University Housing Services, Inc./Mike Hambelton) (Postponed by Council 6/26/2001)

At the June 26 meeting, Council postponed the item to allow staff time to review the excerpts from the City Code and Comprehensive Plan cited by Mrs. Poole as a basis for denial of the request.

The following motion was on the floor when the item was postponed:

“Moved by Poole/Walker for denial of Site Plan Approval SP-2001-03.”

Following the motion there was discussion regarding potential “findings” used in the motion for denial. The agenda package contains a memo from Planning and Zoning Administrator, Peggy Braz, discussing the findings and a number of other issues that were of concern to the Council and the public including drainage, noise, traffic, parking and environmental questions.

Mayor Buckley called for disclosures. Mr. Palmer stated that he visited the site for the second time and he saw a stream with a heavily vegetated area that looks like it is in the flood zone. Mr. Contreras said he spoke with Larry Thompson on July 5 who is in support of the FIT plan. Mrs. Walker said she spoke with John Juliana, SJRWMD, who indicated there have been more recent studies that have not been released and that this is a flood zone area. She also had a visit from a teacher, a high school student, and a college student who wanted to discuss this. She said she explained to them that she could not discuss this but she would listen to what they had to say. They all thought negative thoughts about the proposed plan. Mrs. Poole referenced the disclosures she made at the last meeting. Since then, she said she has talked with Larry Thompson who supports the plan because he is upset with Mr. Wilt because when they stopped the parking by the FIT students along there, they closed off the exit and locked the gate and that is how he was going in/out.

Mayor Buckley asked the City Attorney to specify the meaning of quasi-judicial.

Attorney Gougelman explained that according to the Florida Supreme Court in a fairly well known case, Snyder v. Brevard County, which the Florida Supreme Court issued in 1993, in many land development proceedings, the City Council sits as a quasi-judicial body. Therefore, they are acting in the role similar to a court of law – a quasi-judicial capacity. That means there is previously prescribed criteria in the City Code for approval of site plans and the Council, much like a court, is to apply the criteria to evidence that is

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

presented at a public hearing. A decision is then rendered by the City Council. It is not a proceeding at which the public desire necessarily wins out. If an individual is displeased with the decision, he/she has right to take an appeal in the form of what is legally called certiorari, which is appeal to the Circuit Court. That is notable because you have to have a trial before you can have an appeal and in this case, the trial began at the last Council meeting.

Attorney Gougelman added that one of the judges, Mrs. Hand, was not in attendance at the first meeting. He reported that she has been presented with a verbatim transcript from the proceedings and has reviewed the file and exhibits presented at the meeting. Mrs. Hand confirmed for Mr. Gougelman that she has read the transcript and reviewed the evidence.

Mayor Buckley referenced the discussion from the June 26 meeting where he asked Mrs. Poole not to take a position on a quasi-judicial matter before it comes before the City Council for a vote. He said such actions jeopardize the proceedings and provide the applicant's attorney with grounds for reversal. Mayor Buckley stated that Mrs. Poole has done it again by contacting FDOT and asking them to deny FIT's request for a curb cut on Babcock Street (reference memorandum in agenda package). The Mayor said he will not appeal to Mrs. Poole to suppress her First Amendment right of free speech, but rather would ask her to honor the oath of office she signed.

Mrs. Poole referenced the memorandum Council received from the City Attorney (in the June 26 package) outlining the site plan approval process. She stressed that at the last meeting she said she was not going to take a position on this issue until after the public hearing was over, which she did. She repeated that she did not state a position until after the public hearing. Mayor Buckley disagreed and said Mrs. Poole opposed the project at the Planning and Zoning Board meeting. Mrs. Poole responded that is hearsay and the Mayor noted that the P&Z Board minutes reflect that.

Mrs. Poole stated that she has taken the Florida Tech student housing garden apartments site plan under advisement, as a judge would do, since the June 26 meeting. She asked that Council treat her as a judge and allow her time to make her comments. She referenced the memorandum prepared by the Planning and Zoning Administrator as being manipulative and a misinterpretation of the people who have testified.

Continuing, Mrs. Poole stated that the Environmental Impact Assessment has been completed, which indicates that no wetlands will be impacted and the soil is good. She stated that she, along with others during the public hearing process, questioned that. Quotes were provided from the City Code and Comprehensive Plan and citizens with the backgrounds to qualify them as expert witnesses – Mitch Needelman, Oli Johnson, Jim Egan, and John Wilt – have provided oral and/or written testimony.

Mrs. Poole discussed the noise being produced by the Florida Tech air conditioners on the south end of the campus. She concluded by saying she is entitled to a rebuttal and needs more than 10 minutes allotted by Council.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

In response to the Mayor's request, Mrs. Braz summarized her memorandum in the agenda package. Additionally she noted that she walked the site again and reviewed the requirements to approve and/or deny a site plan.

Mr. Palmer asked Mrs. Braz if she had any problems with ingress/egress to the area from Babcock Street. Mrs. Braz replied no. Mr. Palmer asked if the city has received a decision from FDOT on the Babcock Street access. Mrs. Braz said she spoke with Jack West and he indicated that if the City Council approved the site plan, he would approve the limited access request.

Mrs. Walker asked Mrs. Braz to assess the area since her last site visit. Mrs. Braz said it was generally dry; the creek was flowing well and was about two feet from the water line to the top of the bank on the south side and probably a little more than that on the north side.

Mrs. Walker commented that when Mitch Needelman addressed Council, he questioned whether the development would promote the public health, safety, and welfare. She added that she noticed that Mrs. Braz has added that statement to her recent report on the site plan.

Mrs. Braz agreed with Mrs. Walker that over 200 trees will be removed on site; therefore, they will be impacted. Additionally, she confirmed that the Comprehensive Plan requires the removal of invasive species.

Mrs. Walker asked Mrs. Braz if she feels the City Code is adequate and as it should be, or if there are errors. Mrs. Braz said there are a number of items that need to be changed and the Code is currently being reviewed; however, there are no errors to her knowledge.

Mrs. Walker asked Mrs. Braz if she felt this development would impact the adjacent neighborhood, which has been established for over 40 years. Mrs. Braz said she believes it provides adequate buffering, per our Code, to protect the neighborhood.

Regarding the explanation of quasi-judicial, Mrs. Walker stated that judges have certain parameters in which they must make their decisions, but they frequently use their own judgment to decide if they may make a decision that is not included in those parameters.

Mayor Buckley noted that the public hearing has been closed. He added the following items to the record: a) petition signed by 28 Hickory Hills Subdivision and Melbourne residents opposed to the site plan; b) letter dated July 24 from Mitch Needelman. Mr. Needelman disagrees with staff's interpretation of his concerns presented to Council on June 26. He notes that there is evidence supporting the substantial increase of demand on the Crane Creek drainage basin. Further, he states that FEMA is aware that their maps are outdated and that verifiable information he has submitted indicates that the project does not meet the Comprehensive Land Use Plan; and c) resume submitted by

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Mr. Johnson.

Attorney Gougelman added the following into the record: d) letter from Ken Crooks dated July 3 naming the individuals with St. Johns River Water Management District whom they have discussed this plan with; e) July 24 Agenda Report on this item, which includes Mrs. Braz's memorandum; and f) the rezoning file (Z-6) relating to the original rezoning of Florida Tech property to Institutional dated April 1970.

Mrs. Walker said Mr. Johnson's letter needs to be read. Mayor Buckley said (the Johnsons) spoke at the last meeting, plus their letter is in the package. Mrs. Walker said it indicates his credentials. At this point, Mayor Buckley read Mitch Needelman's letter.

Ken Crooks, attorney representing the applicant, said they object to the introduction of Mr. Needelman's letter without the opportunity to respond. This letter was submitted subsequent to the public hearing being closed.

Continuing, Mr. Crooks said because this issue may be subject to court review, Florida Tech objects to the continued participation in this matter by Council Member Poole. He added that if he does not object, the court will view them as having waived that issue. Mr. Crooks explained that an applicant is entitled to a fair and impartial tribunal and that process calls for quasi-judicial arbiters, not advocates. Further, they believe that Mrs. Poole has overstepped the quasi-judicial parameters by appearing before the Planning and Zoning Board meeting and opposing Florida Tech's application. The second issue relates to Mrs. Poole raising issues as the basis for denial after the public hearing was closed without an opportunity for the applicant to respond. Another issue relates to the letter to the editor and finally, her discussion with FDOT regarding the permitting.

Mr. Crooks stated that Mrs. Poole cannot violate the applicant's due process rights and remain part of the decision making body. He stressed that these are issues of substantive and procedural due process. He encouraged Mrs. Poole to remove herself from further participation in this matter. Mr. Crooks acknowledged that there is no way Council can force Mrs. Poole to remove herself; however, he urged her in the name of fair play to take that action.

Mayor Buckley stated that Council Members are required by law to vote. Mr. Crooks said he understands that and added that if she is here, she is required to vote. Therefore, they are encouraging her not to be here. Attorney Gougelman explained that under the Florida Code of Ethics, a member is unable to abstain from voting unless there is a voting conflict of interest. It does not appear that Mrs. Poole has a conflict. The applicant's counsel has indicated that Mrs. Poole should absent herself from the meeting. Attorney Gougelman said there is an ethics opinion, which prohibits a member from leaving a meeting in order to avoid declaring a conflict or voting.

Mrs. Poole stated she has no intention of ever leaving or giving up her rights.

In response to Mrs. Walker, Mayor Buckley read Mr. Johnson's qualifications. Mrs.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Walker stated that none of the people who sit on Council has those qualifications. Council needs to keep in mind that someone with those qualifications has expressed an opinion.

Mayor Buckley said the things they (the Johnsons) quoted in their letter related to residential property – not institutional property. They selected certain areas of the Comprehensive Plan as basis for denial. The Florida Tech property is zoned institutional; therefore, most of the things they cited do not apply.

Mayor Buckley stated that there is a motion on the floor to deny. (From the June 26 meeting, Moved by Poole/Walker for denial of Site Plan Approval SP-2001-03.)

Mrs. Walker referenced the letter from Dr. Weaver, which states he wanted to be a good neighbor. She pointed out that she has seen or heard nothing that indicates Florida Tech wants to remain a good neighbor. The site is adjacent to an established neighborhood and it impacts the entire city. Additionally, Florida Tech does not pay any taxes so the revenue does not justify asking for favors, which she feels it is doing. She stressed that the property does not have to be developed, regardless of the zoning; it is pristine and needs to remain that way.

Continuing, Mrs. Walker said Florida Tech has other property that it could use. She added that FIT should prove it wants to be a good neighbor by withdrawing the request.

Mrs. Palmer stated that some of the important laws Council Members are sworn to uphold relate to property ownership and private property rights. The FIT site plan has been scrutinized by city staff and apparently all the Codes have been met. However, she stated that a review of the maps and the historic rainfall data for the Crane Creek area has given her reason to pause and take a closer look at the drainage element of the request. She noted that the city does not quite have it together with regard to the review of drainage with site plans. The drainage comes along after the site plan has been approved. She added that sometimes it is obvious to people who have lived in an area a long time that there are certain areas that are wet and after a heavy rain, those areas will be a problem. As the result of storms passing through over the past few years, we learned that Crane Creek is a crucial drainage canal and anything that happens along the creek has a great impact on property upstream and downstream.

Continuing, Mrs. Palmer said it is unfortunate that Council will probably be viewed as being prejudiced because of a Council Member's actions. It is unfortunate because the drainage issue is important and one that needs to be looked at more closely with every site plan.

Regarding the noise and light issues, Mrs. Palmer stated that we have assurance that there won't be a problem. She could believe that had we not had Florida Tech's representative stand before Council and show such disrespect for the city's noise ordinance and for the residents in the area.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Mrs. Palmer concluded by saying she is going to vote for denial based on the FEMA maps and the history of the Crane Creek area. She stated that Council has a legitimate reason to take a closer look at what happens on that property and how it will affect upstream and downstream properties.

Mrs. Hand said the plan seems to meet the criteria for approval with the exception of the drainage. She suggested the item be postponed until the plan has been engineered.

Mr. Palmer stated that the project is in the wrong location; it will have an adverse impact on the environment and he is concerned about the drainage. The area is subject to flooding and it has been proven that the creek overflows after a lot of rain.

Mr. Contreras said he could not find any regulations or Codes that the plan violates; however, he agrees that the plan still has some distance to go. There are particulars that will be crucial for protection of the surrounding neighborhood and he would not want to have his residence in the area in the event the (calculations) were one centimeter off.

Mrs. Poole discussed her concerns with the following: the Planning and Zoning Board not receiving the revised site plan until the night of their June 14 meeting; the Mayor referencing an incorrect site plan number at the last Council meeting; references to the May 2001 site plan; references to the June 2001 site plan; a question about which site plan was actually reviewed and approved; the EIA indicating no wetlands would be impacted and the soils are good; Mrs. Braz's memo which indicates there are two small wetlands on the property containing 1.55 acres; Mrs. Braz's memo which indicates that this area is primarily Zone X; Mr. Needelman's testimony that FEMA has admitted that the flood maps are out of date; existing noise problems with the Florida Tech air conditioning system; and no approval from SJRWMD or DOT.

Mrs. Poole stated that she should qualify as an expert witness based on the amount of time she has spent on this item, her 15 years on Council, 12 years on the Florida League of Cities Environmental Quality Committee and resident of Melbourne since 1929.

Continuing, Mrs. Poole quoted from the City Attorney's memorandum dated June 20 regarding the legal test for whether a site plan should be approved. She began to cite a reference to Article XX of Appendix B, City Code, when the Mayor called time. Mrs. Poole asked Council to allow her to continue. Mayor Buckley said Council is aware of the information Mrs. Poole is reading – it is in the agenda package. A brief discussion followed regarding the time limit being called.

Mayor Buckley referenced the motion on the floor for denial. He said he believes the plan complies with the Comprehensive Plan. The property belongs to Florida Tech and the planned use is much better than constructing a maintenance facility on this site. Additionally, the Planning and Zoning Board recommended approval of the site plan.

Mrs. Poole asked whether Council is voting on the May or June plan. Mrs. Braz replied that it is the June plan.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Mr. Crooks reminded Council that this is site plan approval – not engineering approval. Site plan applications have nothing to do with the issues of flooding and engineering. He added that the city will not allow the engineering to be presented until the site plan has been approved. He noted that the engineering is almost complete and could be done in a short period of time if they are allowed to proceed. Mr. Crooks concluded by stating they will ensure that the engineering satisfies all the conditions and regulations and will be done in such a way that there is no adverse impact on Crane Creek or the neighbors.

A brief discussion followed between Mrs. Poole and Mr. Crooks regarding her telephone call to DOT.

The question was called. The roll call vote was:

Aye: E. Palmer, Poole, Walker, Hand, and C. Palmer

Nay: Contreras and Buckley

Motion carried.

Note: An order will be prepared and returned to Council at the next meeting.

10. ORDINANCE NO. 2001-34: (Public Hearing/Second Reading) A proposed ordinance amending Chapter 23, Retirement and Pensions, related to the variable cost of living adjustment provisions in the Firefighters' Pension Plan. (First Reading 7/10/2001)

Attorney Gougelman read the ordinance by title. There were no comments from the audience.

Moved by Poole/Walker for approval of Ordinance No. 2001-34. The roll call vote was:

Aye: Contreras, E. Palmer, Poole, Walker, Hand, C. Palmer, and Buckley

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2001-35: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 20, Offenses, as recommended by the Code Enforcement Division. (First Reading 7/10/2001)

Attorney Gougelman read the ordinance by title. There were no comments from the audience.

Moved by E. Palmer/Hand for approval of Ordinance No. 2001-35.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Mr. Hill assured Mrs. Palmer that the Code is not intended to make it illegal for a dog or cat to excrete on their owners' property. It relates to dumping of material or using someone else's property as a disposal site.

The question was called. The roll call vote was:

Aye: Contreras, E. Palmer, Poole, Walker, Hand, C. Palmer, and Buckley

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2001-36: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 32, Utilities, as recommended by the City Code Review Committee, Section 1. (First Reading 7/10/2001)

Attorney Gougelman read the ordinance by title. There were no comments from the audience.

Moved by Walker/Contreras for approval of Ordinance No. 2001-36. The roll call vote was:

Aye: Contreras, E. Palmer, Poole, Walker, Hand, C. Palmer, and Buckley

Nay: None

Motion carried unanimously.

13. COUNCIL ACTION RE: Discussion of City Hall study. (Requested by Council Member Contreras at the June 12 meeting)

From the agenda report: At the March 27, 2001 meeting, Herb Sands presented layouts for four alternatives (directed by Council) as follows:

- Construct/expand at the present City Hall site.
- Construct at the Auditorium site.
- Construct a new building at the Auditorium site for some services while retaining some services at the present Downtown location.
- Construct on the North Babcock Street property (former site of the Palms 8 Theater).

At the meeting, staff discussed considerations surrounding these alternatives, including parking issues, funds required for future Auditorium maintenance, and the need for public support of the project. No specific action was taken by Council.

Mrs. Poole said she thought this item would be discussed with the Palms Theater property discussion (scheduled for August 14). Mayor Buckley said that Council Member Contreras

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

had asked for this item to return. The Mayor added that he believes this item should be discussed at a later meeting. Mr. Contreras stated that we need to make a decision on this item; it continues to be postponed.

Discussion followed regarding whether this item could be completed in time for a November referendum. Mayor Buckley said the next city general election is in 2002. Mr. Hill added that we would not be able to meet a November 2001 referendum deadline because we need to return to the public with a full plan and complete details.

Moved by E. Palmer/Contreras to postpone this item until the August 14 meeting.

Mrs. Palmer recommended Council consider a workshop meeting to discuss this issue along with the Fire Station and Palms Theater property.

The question was called. Motion carried unanimously.

NEW BUSINESS

14. COUNCIL ACTION RE: Contract for construction of 16" waterline on Dairy Road, Project No. 01310, Derrico Construction Corporation, Melbourne, Florida – not to exceed \$337,917.55 and appropriation of \$354,800.00 from retained earnings to fund the project.

Mr. Hill reviewed the agenda report. This is a proposed construction contract award for a new 16" waterline along Dairy Road from Eber Road southward to near Palm Bay Road. Bids were opened on July 12, 2001. Seven bids were received with Base Bids ranging from \$330,521.55 to \$464,403.50.

The base bid is the price if all the construction could be accomplished within a utility easement. The city had no easements when the project was initiated. Staff contacted property owners and asked them to convey easements. An alternate bid was included in the bidding documents to cover the potential added cost of constructing within the road right-of-way where easements could not be acquired. Staff has been successful in obtaining easements for most of the project's length. At this point, we anticipate that no more than 660 feet of pipe will have to be in the right-of-way.

Defining the low bidder was dependent on how much of the work will have to be in the right-of-way due to differences in unit prices for that work. Derrico Construction Corporation with the low base bid is also the low bidder based on the estimated quantities of Alternate 1 construction required, i.e. removal and replacement of sidewalk and sod within the right-of-way. Derrico's adjusted bid is \$337,917.55.

This project involves constructing 4,730 linear feet of 16" waterline with valves, fire hydrants, and other appurtenances. The project was initiated as a result of the demand for water by development in the area. Two major projects are BJ's Wholesale Club (under construction) and Princeton Apartments (in plan review stage).

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

We have proposed that development pay for this waterline extension. This would be accomplished by defining a reimbursement area in City Code Section 32-49. There are two reimbursement areas already defined by the Code. Basically, development will pay a fair share of this cost as a reimbursement to the city when they connect to the line. That fair share will be a direct function of the flow capacity of their connections to this extension. Staff will propose an amendment to Chapter 32 to define the reimbursement area to be submitted for the August 14 agenda. This will allow final easements to be obtained.

Reimbursement from BJ's is anticipated in October 2001 when they plan to complete their building construction and tie into the new waterline. BJ's share will be approximately \$139,380 and this figure does not include all the other retail development planned for BJ's Wholesale Club Shopping Center. Princeton Apartments' share will be approximately \$74,835. These two active projects will be funding about \$214,215 or nearly two-thirds of the construction cost. This is in addition to regular impact fees. As development occurs in the area, the city will eventually recoup the entire cost of construction.

It is necessary to create a budget for this project. Funding is available from Water/Sewer Retained Earnings. The recommendation is for approval of the waterline construction contract with Derrico Construction Corporation in the amount not to exceed \$354,800 and appropriation of \$354,800 from Retained Earnings to fund this project.

Moved by Walker/Hand for approval of the recommendation.

Mr. Palmer discussed the Eau Gallie waterline replacement project and asked for assurance that the project on the agenda will not delay the Eau Gallie project. Mr. Hill and Mr. Ralls said the Eau Gallie project will not be delayed as a result of this item. Mr. Ralls added that we just finished a project in the Eau Gallie area and there are other phases planned in the Five-Year CIP. A brief discussion continued.

The question was called. Motion carried unanimously.

15. COUNCIL ACTION RE: Consent Agenda

Mayor Buckley referenced the memorandum indicating that item "e" is being withdrawn by staff.

Moved by Hand/Contreras for approval of the consent agenda, items "a – d" and "f – i."

Mr. Palmer questioned the term of the contract in item "d." Following a brief discussion, Mr. Hill recommended that it be postponed until the next agenda.

The question was called on items "a – c" and "f – i" with items "d" and "e" being removed. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

The consent agenda was approved as follows:

- a. D. B. Lee Wastewater Treatment Plant Warehouse Renovations, Project No. 00314, The Watauga Company, Titusville, Florida - \$39,212.00.
- b. Palms 8 Kent Theater Demolition, Project No. 01610, ABC Landclearing and Development, Cocoa, Florida - \$47,775.00.
- c. Change Order No. 2 to contract for Melbourne Golf Course Greens Renovations, Project No. 01400, Total Golf Construction, Vero Beach, Florida - \$3,870.33.

Note: Items “d” and “e” were withdrawn.

- d. Purchase 1,200 $\frac{3}{4}$ ” x 1” Watts 7-10-U3 Dual Check Regulators for Water Distribution Division (@ \$13.50 each), Ferguson Underground, Orlando, Florida – estimated annual cost \$16,300.00.
 - e. Annual contract for basic software/maintenance for the Police Department, Tiburon, Inc., Fremont, California - \$56,186.00.
 - f. Resolution No. 1702: A proposed resolution authorizing application to the Department of Community Affairs for the Community Planning Technical Assistance Grant Program for funding in the amount of \$50,000 for the formation of the land development regulations for the Olde Eau Gallie Riverfront Community Redevelopment Area to implement the Urban Infill and Community Redevelopment Plan.
 - g. Resolution No. 1703: A proposed resolution authorizing application to the Department of Community Affairs for the Community Planning Technical Assistance Grant Program for funding in the amount of \$40,000 for the Downtown Melbourne Waterfront Gateway project.
 - h. Resolution No. 1704: A proposed resolution authorizing the issuance of Golf Course Revenue Bonds, Series 2001, in the maximum principal amount of \$400,000 to partially finance the drainage improvements and greens renovations at the Melbourne Golf Course, SunTrust Bank, Central Florida.
 - i. Resolution No. 1705: A proposed resolution authorizing the issuance of the Babcock Street Community Redevelopment Agency Revenue Bond Anticipation Note, Series 2001, in the maximum principal amount of \$800,000, SunTrust Bank, Central Florida.
16. COUNCIL ACTION RE: Consideration of set up for the 2002 Melbourne Art Festival.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

From the agenda report: At the March 26, 2001 Council meeting, several Downtown Melbourne merchants presented City Council with a petition requesting the tents be placed in the middle of the streets during the Melbourne Art Festival. The change in set up could not be considered for the 2001 event because artists had already been solicited based on the tents being set up along the sidewalk area. City Council asked the Melbourne Art Festival Committee and the Downtown Melbourne Association to work together to resolve the issue.

As a compromise, several changes were made to the set up of the 2001 event. Tents were placed three feet away from the sidewalk, Code Enforcement Officers worked the event to ensure the sidewalks remained clear, and the tents were placed to allow a four-foot clear space between every two tents.

The 2001 event was held April 28 – 29. On May 21, the City Clerk's staff hand delivered 132 fliers to occupants (residential and commercial) within the Art Festival event area. The fliers indicated that a public meeting would be held at City Hall on June 1 to provide an opportunity for business owners to report about the set up of the 2001 event. Approximately 20 people, along with city staff, attended the June 1 public meeting. A copy of the flier and minutes are included in the package.

The minutes from the June 1 public meeting indicate that a minority of the business owners want the set up in the middle of the street, or no festival at all. However, the general tenor of the meeting was while business is not great during the festival, overall it benefits the Downtown.

After the June 1 meeting, the City Clerk received a package of surveys (separately distributed to Council) from Downtown businesses. Unfortunately, while the public meeting allowed an opportunity for follow up questions and dialogue – the surveys did not.

The merchants who have asked for the change believe the layout of the show can be increased to accommodate a middle of the street set up. The City Clerk contacted the Melbourne Postmaster Ken Rushing to determine if the event could be expanded to the front of the Post Office. Mr. Rushing replied "yes" and indicated that they would provide parking, access, and signage for their customers behind the Post Office.

The Art Festival believes that while the Postmaster has agreed to an increased event area, it probably isn't feasible to make this change. Participants now have a difficult time traveling the entire event area. Increasing the event size would have a detrimental effect. Artists located within the expanded area would probably not receive a lot of walk by traffic. Additionally, the change would eliminate the Flamingo Fling Parade, which has become an integral part of the annual festival.

If the event remains as is, the changes made in set up for the 2001 event should continue with future events. The Art Festival should be instructed to provide better

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

directions to the artists and take whatever action is necessary to ensure the four-foot area between tents is maintained.

Tina Suiter, Vice President, Melbourne Art Festival, discussed the history of the Melbourne Art Festival and its purpose. She displayed pictures taken at the festival and noted that they were recently awarded “top applicant” by the Tourist Development Council. She stressed that their event is worthy of tourist dollars.

Ms. Suiter discussed the compromise reached with the merchants. She noted that the changes had a dramatic effect on the last event. She said clear sidewalks and clearance between tents were not consistent every single moment; however, the Art Festival and city staff worked hard to enforce the changes. She distributed pictures showing that the sidewalks were clear during the last festival for pedestrian access.

Continuing, Ms. Suiter said the festival is willing to take another step towards compromise. They are going to reduce the number of artists in order to ensure the four-foot access between tents. She asked for Council’s agreement in maintaining the set-up used for the 2001 event.

Mrs. Walker asked how many artists participated in the 2001 event. Ms. Suiter replied 250. She added that they have not determined how much they will reduce that by; however, she does not believe that the show will ever have less than 200.

Mr. Palmer asked if they have tried a computer design for booth set-up. Ms. Suiter said a surveyor prepared the festival layout using computer aided drawing software.

Mr. Contreras asked how expanding the event area further west would be detrimental. Ms. Suiter said many years ago they used the parking lot of the Henegar Center and placed artists in the yard. Event participants did not visit that end of the festival. They turned around at Livingston Street. Anything that takes the show off the beaten path greatly impacts the success of the show.

Mrs. Poole stated that she does not want to see the layout changed. She added that increasing the event area would be too much for our older population, especially in the heat of the day.

Cindy Todd, The Baby Patch, 800 E. New Haven Avenue, thanked Council for forcing the Art Festival and the city to sit down with the merchants. For years the merchants have been asking for cooperation; in the past all complaints have gone unheeded.

Ms. Todd said the changes have helped rein in the arrogance of the Art Festival Committee members and the artists. She noted that for one weekend, the festival takes over. They are a not for profit organization run by volunteers. She stressed that her business is not. It is her livelihood.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Ms. Todd noted that the changes were an improvement; however, there is still room for improvement. She noted that the surveys indicate that overwhelmingly, the merchants want the layout moved towards the center of the street. The Post Office is willing to work with the festival and she does not believe the move would be detrimental for the Art Festival.

Mrs. Poole expressed concern with cutting off access to the front of the Post Office.

Mr. Contreras asked Ms. Todd if she is able to quantify her loss of revenue for that one weekend. Ms. Todd said she experiences a 20 – 50% drop in sales. Mr. Contreras asked Ms. Todd if she could quantify an increase in sales following the event as a residual effect of the festival. Ms. Todd said there is no question that the festival brings residual business to Downtown Melbourne. She added that she does not want the festival to disappear; however, she does want changes. Following a brief discussion, she noted that she is not able to tell if increased sales following the event result in a wash of the loss experienced during the festival.

Mr. Palmer asked Ms. Todd if she is pleased with the progress made so far. Ms. Todd said absolutely. She added that the merchants are happy with the progress that has occurred. However, they would like the set-up moved towards the center of the street.

Mr. Contreras noted that the artists will be more aware of the changes; the word is out.

Moved by Poole/Walker to allow the Art Festival to continue with the current set-up, which includes all changes made during the 2001 event, and continue coordination with the merchants and the city. Motion carried unanimously.

17. RESOLUTION NO. 1706: A proposed resolution creating an ad hoc committee to review the Architectural Guidelines which were adopted in 1983.

This is a resolution creating an ad hoc committee to review the architectural guidelines, which were adopted in 1983 for the Downtown Melbourne area. The Olde Eau Gallie Committee would like to utilize the Downtown Architectural Review Board; however, they are not satisfied with the current guidelines. The DARB has also noted that changes need to be made. The committee would be made up of members from the Olde Eau Gallie Community Redevelopment Agency Advisory Committee, the Downtown Melbourne Community Redevelopment Agency Advisory Committee, and the Downtown Architectural Review Board. The City Council would ultimately have to approve any suggestions made by the committee.

Attorney Gougelman read the resolution by title.

Moved by E. Palmer/C. Palmer for approval of the resolution. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

Recessed: 11:28 p.m.
Reconvened: 11:33 p.m.

18. ORDINANCE NO. 2001-38: (First Reading) A proposed ordinance amending City Code Chapter 4, Amusements, by creating a new Article relating to “rave clubs.” (Approved by Council 7/10/2001)

Attorney Gougelman read the ordinance by title.

Mrs. Palmer stated that although she has not read the City Attorney’s report on this item, she is having a difficult time understanding why we need this ordinance. Rave clubs, by their very nature, are associated with drugs and drug use and they should not be located in the city.

Mayor Buckley explained that the ordinance will regulate rave clubs. It does not imply that we are approving them. Additionally, the city felt that it would be better to have rave clubs under our control rather than under control of the county ordinance. The county had asked us if we wanted to be included in their ordinance.

Mrs. Palmer asked if the county’s ordinance prohibits rave clubs and the Mayor responded no.

Attorney Gougelman added that there will be a presentation at the public hearing with regard to evidence. He informed Council that the county ordinance is very similar, although the city ordinance is tighter. The county ordinance provides for licensing, disputes, and appeals to be handled by the County Manager and County Commission. Melbourne would be left totally out of the loop if we joined the county ordinance. Another major problem with the county ordinance is that the County Manager or County Commission can exempt someone from the requirements. Attorney Gougelman said exemption would beg the question of why regulations are needed in the first place.

Regarding the noise ordinance, Mr. Gougelman stated that the city has contracted with an acoustical engineer to review the standards. We expect the noise component to return to Council in September.

Continuing, Attorney Gougelman said that rave clubs can’t be simply outlawed because it is difficult, if not impossible, to prove that a rave club is a drug club and the owner is selling drugs. It is easier to achieve our goals through regulation.

Mr. Hill added that if the city does not adopt its own ordinance and opts out of the county’s ordinance, we would be a target for rave clubs.

Mr. Palmer referenced the recitals of the ordinance and pointed out that they include definite statements, including, “raves *are* sites for drugs...” He commented that we shouldn’t make these definite statements and then provide an ordinance allowing the clubs. Attorney Gougelman agreed that the statements can be amended.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

A brief discussion followed.

Moved by E. Palmer/Poole for approval of Ordinance No. 2001-38 with the following changes (to the first three recital clauses):

a) "...dance halls, and similar forums of assembly, commonly referred to as "raves," are may be sites for...drugs..." b) "...such raves can expose drug activity to the uninitiated youth of our city..." c) "...raves may provide an arena for predatory-type sexual crimes..."

Mrs. Palmer said she is not comfortable with this at all. When Club Energy opened, Council was told that Melbourne Police Officers frequented the club, worked at the club during their off time, and gathered in the parking lot to talk when off duty. She said it is a problem that the people who are supposed to enforce the ordinances are so familiar with the owners of these clubs. Mrs. Palmer asked if future rave clubs will use off duty Melbourne Police Officers in their establishments.

Mr. Hill stated that we could stipulate that the security force must be private. Mrs. Palmer replied that she wants to ensure that our officers don't have a conflict by working for the club owners.

The question was called. Motion carried unanimously.

19. ORDINANCE NO. 2001-39: (First Reading) A proposed ordinance amending Chapter 31, Traffic and Vehicles, relating to the solicitation of employment, business or charitable contributions from the occupants of vehicles on the streets of the City. (Approved by Council 5/22/2001)

Attorney Gougelman read the ordinance by title.

Moved by Poole/Hand for approval.

Mayor Buckley stated that he will vote against the ordinance.

Mrs. Palmer said she is concerned that the ordinance could be interpreted to prohibit people from handing out religious fliers from the curb. Mr. Hill read the definition of solicit in the ordinance and noted that soliciting does not relate to the distribution of information.

Attorney Gougelman said if a church attempted to accept contributions or a business handed out fliers – those things would be in violation. However, if a flier was distributed announcing a special Christmas session at church, that would not be a violation.

Mrs. Palmer stated that the city needs to remember that after the ordinance is adopted. Attorney Gougelman added that the research indicates that if the ordinance is narrowly drawn, then it will withstand court scrutiny; it is an extremely fine line. One thing that makes this defensible is that it does not stop someone from passing out fliers on the sidewalk;

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 2001

however, it does stop them from passing out fliers in traffic.

The question was called. Motion carried. Vice Mayor Palmer and Mayor Buckley voted nay.

20. COUNCIL ACTION RE: A proposed Settlement Agreement between the Cities of Melbourne, West Melbourne, Palm Bay and Brevard County regarding the Palm Bay water/sewer reserve area.

On July 9, 2001 an agreement was reached between the Cities of Melbourne, West Melbourne and Palm Bay, and Brevard County regarding the Palm Bay water/sewer reserve area lawsuit. Council action regarding the Settlement Agreement is required.

Key to the settlement is that Palm Bay will repeal its reserve area Ordinance No. 98-13 and replace it with an interlocal agreement among West Melbourne, Brevard County, Palm Bay, and Melbourne. The agreement sets forth the general framework of what the interlocal agreement will provide.

The proposed Agreement is not effective until Palm Bay's Ordinance No. 98-13 is repealed. To comply with the Growth Management Act, the Agreement represents approval by the County for the City of Melbourne to provide service in the unincorporated area. Paragraph 9 of the agreement provides that the litigation will be dismissed. Each party will bear their own expense of attorneys' fees. If enforcement of this agreement becomes necessary, enforcement will be by injunctive relief.

Moved by Hand/Contreras for approval of the agreement. Motion carried unanimously.

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

22. ADJOURNMENT

Moved by E. Palmer/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 12:01 a.m.

City Clerk – 8/10/2001

Approved by Council: _____