

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 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 Vice-Mayor Cheryl Palmer.

1. The invocation was given by Reverend Jorge Acevedo, Lakecrest Community Baptist Church.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

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| Present: | Cheryl Palmer | Vice Mayor, District 5 |
| | Richard Contreras | Council Member, District 1 |
| | 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, III | City Attorney |
| | Cathleen A. Wysor | City Clerk |
| | Peggy Braz | Planning and Zoning Administrator |

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| Absent: | John A. Buckley | Mayor (out of town) |
| | Ed Palmer | Council Member, District 2 (out of town) |

4. PROCLAMATIONS AND PRESENTATIONS

Vice Mayor Palmer presented the proclamation for "Constitution Week," September 17-23, 2001, to Jeanne Roach, Regent, Abigail Wright Chamberlin Chapter of the National Society Daughters of the American Revolution.

5. APPROVAL OF MINUTES - August 28, 2001 Regular Meeting

Moved by Walker/Poole for approval. Motion carried unanimously.

6. CITY MANAGER'S REPORT

Mr. Hill referenced the information distributed regarding Mrs. Poole's travel request and asked that the item be added to the agenda as Item 18.1.

Additionally, he noted the information distributed on the operation plan, as it relates to the City of Melbourne, as a result of the September 11 terrorist attack on the World Trade Center and the Pentagon. He explained the steps the city has taken to be in a state of appropriate readiness.

Moved by Contreras/Hand to add Item 18.1 to the agenda. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 2001

7. PUBLIC COMMENTS

Richard Bailey, 829 East New Haven Avenue, referenced the petition submitted by merchants in February/March 1999 asking that New Haven Avenue not be closed during normal business hours. He explained that when the item went to Council for action, Council voted on limited closure as it relates to the Friday Fest event only. He stressed that the petition requested action be taken for all closures (not just the Friday Fest event).

Mr. Bailey discussed his concern about the closing of New Haven Avenue last Saturday during regular business hours for an event sponsored by the Florida Cannabis Action Network. He said that the City Clerk's staff informed him that the applicant submitted the required petition from the merchants affected by the road closure and met all other conditions; therefore, the permit was issued. Mr. Bailey asked that an item be placed on a future agenda regarding the closing of New Haven Avenue during business hours for all events.

Mr. Hill and Attorney Gougelman informed Mr. Bailey about recent court decisions regarding this issue. The City Attorney noted that applicants have almost an unfettered right to conduct a free speech/political type event on public rights-of-way. As a result, the city's current regulations will probably become more liberal. The city's legal staff will be monitoring all court decisions regarding this issue.

Mr. Bailey asked if this means the KKK can conduct a rally in Downtown Melbourne if they meet the requirements imposed by the city (submission of petition, liability insurance, etc.). Attorney Gougelman replied that the city's current requirement that the merchants agree via petition to the road closure is unconstitutional.

Mr. Bailey said that in view of the explanation, he will withdraw his request. He asked that the city keep him informed about this issue.

Tom Porcella, 1696 PGA Boulevard, recalled the presentation he made to Council about the condition of his and other homes in the Greenbriar Subdivision as a result of what Mr. Porcella called "shoddy workmanship" by the contractor. He stated that he expected the City Manager to forward his complaint to the State Attorney's Office for appropriate action. He noted that he has pointed out the wrongdoings of the contractor and he expects the contractor to take responsibility.

At this point, by consensus Council granted Mr. Porcella more time to speak. Mr. Porcella concluded his presentation. Mrs. Poole asked Mr. Porcella if he wanted his complaint sent to the State Attorney and Mr. Porcella replied yes.

Mr. Hill explained that he has not yet discussed the issue with the City Attorney. He noted that he is concerned that if the City of Melbourne is bringing charges, that we proceed in a proper manner. He added that Mr. Porcella is free and capable of presenting his charges to the State Attorney. Additionally, he pointed out that this is a

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 2001

civil matter between Mr. Porcella and the builder and Mr. Porcella has been advised by staff to seek legal counsel.

Mr. Porcella said that it would be too expensive to hire an attorney; there would be nothing left. He added that he is content to have Council investigate and stressed that he is not doing this for the money. He is pursuing this because the violations are gross.

A brief discussion followed between Mrs. Poole and Attorney Gougelman regarding the procedure for obtaining an opinion from the Attorney General. Mr. Hill clarified that Mr. Porcella has asked for the issue to be sent to the State Attorney. Mrs. Poole replied whatever and added that his complaint has been sitting.

At this point, Mrs. Palmer referenced the tragic events that occurred today as a result of the terrorist attack on the World Trade Center and the Pentagon. She asked Council to consider postponing the items on the agenda until September 18 following the budget public hearing, with the exception of Items 15 and 18.1, which have time constraints.

Attorney Gougelman noted that a number of the items have been advertised for public hearing. He recommended Council list those items, open the public hearing, and move to continue.

Vice Mayor Cheryl Palmer opened the public hearings on Items 8, 9, 10, and 11. There were no comments from the audience.

Moved by Hand/Poole to continue the public hearings (and Council action) on Items 8, 9, 10, and 11 until September 18 following the budget public hearing. Motion carried unanimously.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2001-44: (Public Hearing/Second Reading) A proposed ordinance to amend 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. (First Reading 8/28/2001)
9. ORDINANCE NO. 2001-37: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 19, Licenses, as recommended by the City Code Review Committee, Section 1. (First Reading 8/28/2001)
10. ORDINANCE NO. 2001-46 (CU-2001-09): (Public Hearing/Second Reading) A proposed ordinance for a conditional use to allow for the consumption of alcohol on premises located at the north side of Sarno Road, approximately one-quarter mile east of Wickham Road. (Owner, Leonard Lewis; applicant – Wid's Place, Inc., and representative – Wid T. Bell) (First Reading 8/28/2001)
11. ORDINANCE NO. 2001-48 (DR-2001-03): (Public Hearing/Second Reading) A proposed ordinance to de-annex a .77-acre parcel from the corporate boundary of the city located on the north side of East Eau Gallie Boulevard, west of SR A1A and east of South Patrick

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 2001

Drive. (Requested by Eau Gallie Development, LLC) (First Reading 8/28/2001)

NEW BUSINESS

Moved by Hand/Contreras to postpone Items 12, 13, 14, 16, 17, 18 and 19 until September 18 following the budget public hearing. Motion carried unanimously.

12. COUNCIL ACTION RE: Consent Agenda
- a. Resolution No. 1714: A resolution to apply to the Department of Agriculture and Consumer Services, Division of Forestry, for the Urban and Community Forestry grant to fund improvements to Babcock Street Park.
 - b. Approval of Highway Maintenance Agreement with the Florida Department of Transportation (FDOT) to maintain a sidewalk to be constructed along the west side of U.S. 1 from Syracuse Avenue to Laurie Street.
 - c. Purchase of two replacement Evinrude 250 HP V6 outboard motors for the Fire Department boat, Bombardier, Inc., Waukegan, Illinois - \$18,535.
 - d. Annual contract for Data Processing continuing maintenance and support services, KPMG Peat Marwick, Washington, D.C. - \$74,950.
 - e. Storm sewer line slip lining rehabilitation of 1,200 linear feet on Dawn Drive by the Streets Division, Azurix North America, Longwood, Florida - \$109,650.
13. COUNCIL ACTION RE: A request for an increase of \$12,055 to the Community Housing Initiative's April 2001 award for the Purchase Assistance Program and authorization for the City Manager to execute the amendment to the 2000-2001 SHIP Budget.
14. COUNCIL ACTION RE: A request for consideration of possible purchase of property adjacent to Lift Station #15 located on the south side of Sarno Road, west of Croton Road.
15. RESOLUTION NOS. 1708 AND NO. 1715: Resolutions to adopt an annual Stormwater Utility budget for the fiscal year beginning October 1, 2001 and to certify the Stormwater Utility assessment roll.
- a. Resolution No. 1708: (Public Hearing) A resolution to adopt an annual Stormwater Utility budget for the fiscal year beginning October 1, 2001.
 - b. Resolution No. 1715: A resolution to certify the Stormwater Utility Assessment Roll.

Mr. Hill reviewed the agenda report. These items relate to the Stormwater Utility. It is required that the city formally adopt a budget for the utility and a resolution certifying the assessment roll prior to September 15 each year.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 2001

Resolution No. 1708 provides for adoption of the \$860,000 Stormwater Utility budget for Fiscal Year 2001-2002. This includes anticipated interest income and takes into consideration that it is unlikely that we will we will collect 100% of revenue. This is based on an equivalent residential unit (ERU) effective rate of \$18.00 (50% of \$36.00).

This tentative budget has been preliminarily approved by Council in consideration of the proposed tentative 2001-2002 city budget. The budget includes funding for county staff administrative services and direct costs, funding for billing and collection of the fees by the County Tax Collector, storm drain on Sherwood Boulevard and Charles Drive, drainage system on Spain Avenue, and treatment system in NDP Park.

Resolution No. 1715 is a resolution to certify the stormwater utility assessment roll. The city is required by law to certify the non-ad valorem assessment roll to the Tax Collector by September 15 of each year. The assessment roll is submitted to the tax collector on electronic medium. The information will be transmitted by Brevard County Surface Water Improvement staff who provide administration of the stormwater utility through our interlocal agreement.

The assessment roll was adopted two years ago and does not need to be re-adopted unless there is a change in the assessment rate or a change in purpose or use of the funds. The attachment to the resolution is a computer printout summary of the assessment roll, which simply indicates the total amount to be billed to 13,333 parcels is \$859,164.05

The City Attorney read Resolution No. 1708 by title. Vice Mayor Palmer opened the public hearing. There were no comments from the audience.

Moved by Poole/Walker for approval of Resolution No. 1708. Motion carried unanimously.

Following a brief discussion, Mrs. Poole asked that the issue of eliminating the credit and considering the full assessment (\$36) return to Council next year. Ron Jones with Brevard County recommended that Council consider this in February/March of 2002.

Attorney Gougelman read Resolution No. 1715 by title.

Moved by Walker/Contreras for approval of Resolution No. 1715. Motion carried unanimously.

16. COUNCIL ACTION RE: Request by Harris Sanitation, Inc., for an increase in solid waste collection rates.
- a. Ordinance No. 2000-49: (First Reading) A proposed ordinance amending Chapter 14 of the Code of Ordinances entitled Garbage and Refuse, providing rates for the collection of garbage and trash.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 11, 2001

- b. Proposed contract Modification Agreement with Harris Sanitation, Inc.
17. ORDINANCE NO. 2001-50: (First Reading) A proposed ordinance to amend Chapter 7, Boats, Bulkheads, Marinas, and Waterways, as approved by the City Code Review Committee, Section 4.
18. ORDINANCE NO. 2001-51: (First Reading) A proposed ordinance to amend Chapter 8.5, Cemeteries, as recommended by the Code Review Committee Section 4.

Added to the agenda:

- 18.1 COUNCIL ACTION RE: Request by Council Member Poole to attend the Florida League of Cities Quality Policy Committee Meeting, September 14, 2001, in Tampa.

Moved by Hand/Contreras for approval. Motion carried unanimously.

19. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole referenced the manatee protection information distributed, which she received at the Space Coast League of Cities meeting. She asked that a resolution of support be prepared and noted that it needs to be done in early October.

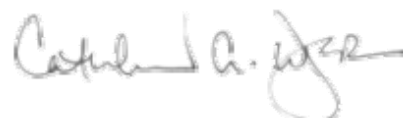
Mr. Hill distributed information prepared by the City Attorney regarding the process defined as a complaint review board – the legal basis for investigation into the suicide of Officer Larry Simpson. The NAACP along with other community leaders will review the information.

Mrs. Walker and several other members noted that they have received numerous letters and telephone calls in support of Chief Chandler.

20. ADJOURNMENT

Moved by Poole/Hand to adjourn. Motion carried unanimously.

The meeting adjourned at 8:10 p.m.



City Clerk – 9/14/2001

Approved by Council: _____