

CITY OF MELBOURNE, FLORIDA
MINUTES - SPECIAL MEETING BEFORE THE CITY COUNCIL
JULY 2, 2002

A special 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. All present gave the Pledge of Allegiance to the Flag of the United States of America.
2. Roll Call.

Present:	John A. Buckley	Mayor
	Loretta Isenberg-Hand	Vice Mayor, District 6
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Henry J. Hill	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy Elliott	Director of Finance
	Suzanne Novak	Assistant City Attorney
Absent:	Richard Contreras	Council Member, District 1 (out of town)

Mayor Buckley referenced the memorandum from the City Manager regarding the addition of one item to the agenda.

Moved by Walker/C. Palmer to add Item 6.1 to the agenda. Motion carried unanimously.

3. Independent Auditor Selection Interviews
 - a. Berman Hopkins Wright & LaHam
 - b. Bray, Beck & Koetter
 - c. Hoyman, Dobson & Company

From the agenda report: The purpose of this item is for Council to hear presentations from the firms submitting proposals to serve as the independent external auditor.

The auditor selection procedures require the City Council, as the Auditor Selection Committee, to make a finding that the firm selected to perform annual independent auditing services is fully qualified to render the required services. To expedite the contract negotiation process, the recommendation is for Council make a finding that both the first and second ranked firms are fully qualified to render the required annual independent audit services.

Following Council's decision, staff will negotiate with the top ranked firm and return to Council on a future agenda for consideration of a contract.

The Mayor asked each firm to begin their presentation.

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Berman Hopkins Wright & LaHam:

John Hopkins and Ross Whitley provided Council with a presentation of their proposal for audit services. They briefed Council on the history of the firm, capabilities, competitive advantage, GASB 34 requirements, and reasons to select Berman Hopkins Wright & LaHam.

Mr. Palmer asked if the fees charged by the firm for the City of Melbourne are higher than the fees charged other municipalities. Mr. Whitley said yes and pointed out that our finances are more complex; we have a larger financial mechanism.

Mr. Palmer asked if the firm could guarantee its fees for the duration of the contract and Mr. Whitley replied yes. Additionally, in response to Mr. Palmer, Mr. Whitley elaborated on the field work and how the firm's staff would be supervised.

Bray, Beck & Koetter:

Kathy Thomas Beck introduced the audit team and listed their specific experience. Ed Beck provided an overview of their proposal and elaborated on why the city should change firms, their specific government experience, audit approach, industry leadership, GASB 34 implementation, and a summary of the firm's strengths.

Mr. Beck confirmed for Mr. Palmer that the firm would guarantee its fees for the three-year duration. Additionally, Ms. Thomas Beck discussed the field work and how the staff's work would be managed and reviewed.

Hoyman, Dobson & Company:

Chas Hoyman introduced the team and discussed their experience in auditing municipalities. Debbie Bradley expanded on the approach they would use to conduct the audit. She noted that their firm has more experience working with the city and has a thorough understanding of our internal controls. And, they are positioned to assist the city in implementing GASB 34.

Mayor Buckley noted that the GASB 34 requirements have to be implemented by 9/30/2003. He asked why the rate would still be high during the third year of the contract. Ms. Bradley replied that there will be an additional document required each year as a part of our financial statement. The full accrual requirements result in another level of review.

Mrs. Palmer noted that Hoyman is familiar with the city yet their hours are substantially more than one of the other firms. Ms. Bradley said they know what it takes to do the City of Melbourne audit. Laptop computers are used; however, they still have a significant amount of work to do. She pointed out that the cost for the city's audit is less now than it was in the 1980's.

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That concluded the presentations. Mayor Buckley asked each Council Member to score the firms one, two and three with one being the highest. City Clerk Cathy Wysor read the scoring from each Council Member as follows:

MEMBER	BERMAN HOPKINS WRIGHT & LAHAM	BRAY, BECK & KOETTER	HOYMAN, DOBSON & COMPANY
Ed Palmer	1	2	3
Pat Poole	2	3	1
Grace Walker	3	2	1
Cheryl Palmer	2	1	3
Loretta Hand	2	3	1
John Buckley	1	3	2
Total	11	14	11

Attorney Gougelman read the total for each and noted the tie between Berman and Hoyman. Ms. Elliott referenced the memorandum in the package, which states that the Auditor Selection Procedures provide that the firm with the most number one votes shall be the top ranked firm.

Mayor Buckley announced that Hoyman, Dobson & Company is the top ranked firm with Berman Hopkins Wright & LaHam being second.

Moved by Poole/C. Palmer to make a finding that Hoyman, Dobson & Company and Berman Hopkins Wright & LaHam are fully qualified to render the annual independent audit services. Motion carried unanimously.

4. ORDINANCE NO. 2002-52/NOISE: (Public Hearing/First Reading) An ordinance amending Chapter 20, "Offenses," by establishing noise and vibration standards.

City Attorney Paul Gougelman read the ordinance by title.

Recessed: 8:51 p.m.
 Reconvened: 9:01 p.m.

From the agenda report: Estimated costs for implementing the new ordinance include \$14,000 for training and \$6,000 for two sets of equipment to be used by the Police Department and Code Compliance Division.

Assistant City Attorney Suzanne Novak provided an overview of the ordinance. The following are excerpts from her memorandum (in the agenda package): The city retained the services of Joseph Tessitore, P.E., with Harding ESE, engineering consulting firm in Orlando. The proposed noise ordinance was prepared in response to numerous complaints by private citizens concerning noise and complaints by business owners concerning termination of entertainment activities due to unreasonable citizen complaints.

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Section 20-24 sets forth the purpose of the ordinance. Section 20-25 contains the definitions. Section 20-26 sets forth the findings of fact justifying the ordinance. Section 20-27 sets forth the maximum permissible sound levels per land use category and time of day, based upon certain measurement descriptors and adjustments. This section contains several charts and tables identifying the permissible levels in both decibels and frequency ranges. Section 20-28 describes in detail the procedure for measuring sound in compliance with the ordinance. Section 20-29 prohibits the production of any sound that exceeds the sound level limits set forth in Section 20-27. Section 20-29 also allows a Police or Code Officer to issue a notice to appear to, or arrest, a person producing a loud and disturbing noise, without regard to the technical requirements of the ordinance. This is a subjective standard and should only be used in exigent circumstances – for example, the occasional noisy party.

Section 20-30 lists the types of sounds and vibrations that are exempt from application of the ordinance. Section 20-31 provides for variances. Section 20-32 provides that the Police Department or any authorized Code Enforcement Officer will enforce the ordinance. Any violation of the ordinance would be punishable as provided in Section 1-10 of the Code under Section 20-33, and Section 20-34 allows affected persons to pursue other remedies. Section 20-35 states that Code and Police Officers shall be immune from suit for trespass while performing the duties required by the ordinance.

Ms. Novak confirmed for Mrs. Palmer that Section 20-35 provides that personnel acting under the color of the law are immune from civil liability. Noise levels are always taken at the property line; therefore, there would not be a reason for an employee to enter a residence.

Mrs. Hand referenced the exemptions and asked why lawn blowers are excluded. She noted that they are extremely noisy. Ms. Novak said she would need to know a particular manufacturer's specifications before determining if a blower is exempt.

Attorney Gougelman said if it is Council's desire, the ordinance could probably be written so that type of equipment is not exempt.

Mrs. Poole said she has a problem with commercial blowers that start up at 6:00 a.m.

Mrs. Palmer referenced the exemption of "scheduled organized athletic contests" and recommended that practice, including band practice, be exempt. She stated that marching bands have to practice outside. Ms. Novak said she believes that would qualify and the ordinance can be revised to include this.

Mrs. Palmer reported that following a hurricane one year, many people in her neighborhood used generators. She said generators should be allowed in case of an emergency power outage.

Mr. Hill said home maintenance activities, in the broadest of terms, could probably be added. Although we don't want to allow the equipment to run all the time, we could probably draft reasonable language.

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Mrs. Palmer said that although she does not want our ordinance to prohibit people from owning dogs, she would like to know if it addresses barking dogs, which are a nuisance.

Joe Tessitore, consultant, said if a dog continues to bark, the meter will measure the sound.

Mr. Palmer asked what effect this ordinance will have on boom boxes in a vehicle. Ms. Novak said Chapter 316, Florida Statutes, covers that. Police Officers have the authority to stop and pull over a vehicle. Citations are issued under the Uniform Traffic Control Act.

Attorney Gougelman clarified that the statute would be used in traffic; however, if a vehicle is parked, it would be covered by our ordinance.

Attorney Novak confirmed for Mr. Palmer that in order for fireworks to be exempt, they have to be legal. Unlawful discharge of fireworks would not be considered an exemption.

Attorney Gougelman discussed prosecutorial discretion and said when a Code and/or Police Officer responds to a location where there is excessive noise, the first contact won't be to write a citation. It will be to make contact with the person violating the law and ask that the noise be toned down.

Mayor Buckley asked if it is Council's consensus not to exempt grass blowers. Mrs. Palmer said no, especially if the city is using the same type of equipment for maintenance. Mr. Palmer said he does not have a problem with blowers. Mrs. Palmer said that perhaps this is an issue where the time (no earlier than 7:00 a.m.) should be enforced.

Joe Tessitore discussed the noise ordinance criteria and informed Council that staff reviewed a lot of other cities' ordinances. The ordinance that has been developed is comprehensive. The EPA noise guidelines, developed in the 1970's, were used. The purpose of the EPA criteria is to protect people from hearing loss. From a health point of view, we should not allow noises that approach 70 dB. That is the reason most ordinances have 65 dB as an upper limit; it provides for a 5 dB margin.

In order to have normal speech inside of a house, the background level can't exceed 45 dB. This relates to 60 dB outside if we assume a 15 dB drop between the outside and inside. This also assumes that windows will be open, which is rare in Florida. After 10:00 p.m., the scale changes for sleep protection. The level inside drops to 40 dB for sleep comfort, which relates to 55 dB outside.

Mr. Tessitore listed common indoor and outdoor noises and their levels. Additionally, he reported that in April and July 2001 measurements were taken around the city. Locations include FIT in the area where residents have complained about the air conditioner noise, Friday Fest in Downtown Melbourne, Coral Bay Restaurant (U. S. 1 across from Jim

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Rathmann Chevrolet), Dr. Joe's (Eau Gallie Boulevard in Downtown Eau Gallie), and Conchy Joe's (Pineapple Avenue).

Mr. Tessitore informed Council that noise levels occur at different frequencies and the ear hears a composition. The "A Band" represents the human ear. The keenest hearing occurs between 1,000 and 5,000 with a peak around 2,000. The ear takes all the frequencies and integrates the sound. The ordinance provides for the meter to be set at the "A Band" to mimic what the human ear hears. At lower frequencies there will be more vibration. Lower frequencies travel farther. Bass sounds occur at 125 – 500 cycles.

In response to Mrs. Walker, Mr. Tessitore said he would provide the noise measurements taken at FIT.

At this point, Mr. Tessitore provided a sound demonstration for Council using a City of Melbourne vac truck (located outside the Council Chamber) and a DJ set up in the Chamber. Mr. Tessitore responded to questions from the audience.

That concluded the demonstration. Mayor Buckley opened the public hearing.

Colette Alexander, 808 Hickory Street, discussed the noise from the Coral Bay Restaurant and noted that it is a quality of life issue. She stated that she is concerned about any variances that might be granted and informed Council about being woken at all hours of the night. She encouraged Council to adopt the new ordinance.

Greg Genco, 2110 Myla Lane, said he is concerned that the new ordinance does not cover boom boxes. He added that he does not feel the Police Department is enforcing the state statute. He asked if boom boxes could be included in the new Code.

Attorney Gougelman said one reason the state statute has not been enforced is because we do not have the equipment. Part of the proposal before Council provides for the purchase of new equipment.

Mr. Genco asked how the Code will be enforced with equipment. He said that once a car drives by, it has already made its impact. He stressed that the only way to enforce boom boxes is to have a concerted effort by the Police Department.

Mr. Palmer asked if boom boxes can be addressed in the ordinance. Ms. Novak said the ordinance addresses noise, no matter what the source is. She added that the courts have struck down as unconstitutional noise ordinances that ban a specific sound generator.

Attorney Gougelman added that the ordinance addresses boom boxes, but does not confront noise in traffic because of the state statute. Mr. Palmer asked if we can emphasize the state statute in our ordinance. Attorney Gougelman replied yes.

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Mrs. Palmer asked if we are going to allow a period of time to educate the public about the new standards. Mr. Hill said that would be part of the enforcement effort through the Police Department and Code Compliance.

Mrs. Palmer asked if the river affects the loudness and the distance noise travels. Mr. Tessitore replied that on the water there is no attenuation – or deadening of sound. With water there is no elevated terrain; therefore, noise carries a distance over water. He agreed with Mr. Palmer that wind direction also plays a role.

Moved by Hand/E. Palmer for approval of Ordinance No. 2002-52.

Mayor Buckley said the City Attorney made notes to incorporate some additional items into the ordinance by second reading on July 23.

The question was called. Motion carried unanimously.

5. Discussion of Airport Matters

From the agenda report: At the March 26 meeting, Council asked the City Manager and City Attorney to look into a number of issues including the Melbourne Airport Authority, its composition and the boundaries of the Airport. The City Attorney has completed his review of the boundaries. His report, with maps, is included in the agenda package.

Attorney Gougelman reported that researching the Airport boundaries has been an arduous task. Essentially there are no boundaries of the Airport Authority, which was an oversight when the Authority was created. The task Council would be called upon is to determine what those boundaries should be.

The Airport Police Department jurisdiction was determined by an ordinance in 1997 (Exhibit B). There are areas conveyed to the city in the late 1940's by the federal government (Exhibit A). Those deeds have specific restrictions as to how the property is used – either for Airport purposes or the monies that come from those properties to directly benefit the Airport.

There are properties that were not deeded by the federal government. They were purchased by the City of Melbourne and are technically owned by the City of Melbourne, but for direct Airport uses. The property on the west side of the airport shown on Exhibit A as the green property represents the ends of the runways and the clear zones. It is clear that those properties ought to be assigned to the Airport Authority.

Some of the properties are currently being used for non-Airport related functions. The most obvious is the sewer plant. Nonetheless, those properties may be subject to federal deed restrictions. The city and the Airport Authority should seek some type of release from the federal government.

Exhibit C shows properties that have been released from federal jurisdiction. His limited review indicates that in many cases money was provided – either as a credit against

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federal grants or some other method – and had to be approved by the federal government. The release is at the whim of the federal government. He stressed, however, that any release would probably cost money.

With the history that has been uncovered, Exhibit D was created, which arbitrarily carves the Airport into eight zones to assist Council in going through the review in a focused way.

Mr. Gougelman summarized and stated that this is his best shot of collecting data without a formal title search. There are a couple of gaps, which are represented by the blue area on Exhibit A. Those areas would require an intensive research.

Attorney Gougelman confirmed for Mr. Palmer that the land where the Police Department is located has been released from the federal government.

Jim Johnson, Executive Director, Melbourne International Airport, presented an overview on the history of the Airport and makeup of the Airport Authority and staff.

Lee Bohlmann, President, Melbourne Palm Bay Area Chamber of Commerce, stated that the Melbourne International Airport is a regional resource with local control and the Chamber supports the continuance of the Airport Authority in its current form. She recommended that Council and the Airport Authority consider conducting joint meetings in order to identify challenges.

George Pittman, retired Assistant Airport Director, discussed the surplus property act of 1947, which gave the Airport property to the city. He discussed an inspection by the FAA years ago to review the accounting records. The inspector found that \$150,000 had erroneously been charged to the Airport and as a result a grant was pulled. He stressed that if the city does something that the FAA does not agree with, the funding will be pulled.

Mayor Buckley said he would support asking the FAA to release the sewer plant area (Area 8 east of Apollo Boulevard) to the city, although the city may have to pay. Mrs. Palmer said she had the same thoughts about the Police Department property (Area 2). Attorney Gougelman noted that the land occupied by the Police Department has already been released.

Mrs. Palmer asked the purpose of separating Area 8 east of Apollo Boulevard from the remainder of the property. Mayor Buckley said there is a possibility of using some of the property on the west side to expand the hangar area.

Mrs. Poole stated that it is time to have a new Charter. Chapter 69-879, Laws of Florida, 1969, was based on the 1969 referendum to merge the two cities. Most of the language from old City of Melbourne Ordinance No. 67-7 (establishment of Airport Authority) was repeated verbatim in the 1969 Charter.

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Continuing, she stated that the boundaries of the Airport have to be legally verified by a title search. Since this will benefit the Airport, the Airport Authority should pay the cost. Mrs. Poole read the information from the agenda package on the amount paid by the city to the Airport Authority for the lease of property.

Mrs. Poole concluded by questioning why Port O' Call was not considered valuable. She added that we need a new Airport Authority, one which the city has control over. She repeated that we must approve a (title search) for the boundaries of the Airport.

Mr. Palmer said there is no doubt that the City Council has to designate the boundaries of the Airport. He added that the city has to work in conjunction with the Airport Authority to get certain properties released. The problem of paying for the sewer plant property must be resolved expeditiously.

Regarding the issue of the composition of the Airport Authority, Mr. Palmer referenced the action that must be taken in order to accomplish that. Mrs. Poole said she would like Council to consider that.

Mayor Buckley asked what is wrong with the current Airport Authority. Mrs. Poole said the city is not in control – we only have three members on the Authority. Additionally, there are currently two members serving from the same law firm. She cited problems with the Airport, which include: no information on what is happening with Global Technologies, yet they are kicking out Port O' Call; Council needs to appoint its own members to the Airport Authority; the Airport Authority needs to come to City Council for approval of items; and the timing of the new parking garage.

Mayor Buckley pointed out that the Airport Authority has three Council Members who look out for the city's interest. Mrs. Poole said they don't vote the same. Mr. Palmer replied that he hopes the members vote their conscience rather than voting in unison.

A brief discussion continued regarding flight service at the Airport and the industrial/technological area.

Mrs. Walker said that the city should not be making lease payments to the Airport for its own property. She agreed that there needs to be a blending of ideas between the Airport Authority and the City Council. She added that it troubles her that two members from the same law firm serve on the Authority. And, a family member of an Airport Authority member should not be arranging for airline tickets and travel arrangements. She said that seems like a conflict of interest. She concluded by saying that perhaps several of the other members of the Authority need to be appointed by City Council.

Mr. Palmer asked Mr. Johnson if the Airport Authority will work in conjunction with the city to get the sewer plant property released. Mr. Johnson said he would work with the city and will set a meeting with FAA.

Moved by E. Palmer/Walker to take action in conjunction with the Airport Authority to get that property (sewer plant) released (from the FAA).

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A brief discussion followed regarding the Police Department property. Attorney Gougelman confirmed that the Police Department property has been released. He added that the property is within the northern portion where the chain of title has not been established (Exhibit A).

The question was called. Motion carried unanimously.

Moved by E. Palmer/Walker to have the Police Station property determined so that it can be titled to the City of Melbourne and no longer be part of the Airport Authority.

Mr. Palmer said if it takes a title search to cover the blue area (Exhibit A) then we should proceed. Mrs. Palmer asked the Airport's view on paying for the title search. Mr. Johnson replied that we need to determine what is involved and the cost. Mrs. Palmer said that would be beneficial to the Airport to have that clarified. Mr. Palmer clarified that he is only referring to the blue area (on Exhibit A). Attorney Gougelman pointed out that Exhibit A has two blue areas. Mr. Palmer said the second blue area contains runways and he does not believe there is a question that property belongs to the Airport.

Following a brief discussion, Mr. Palmer repeated that he is only referring to the blue area to the north (Exhibit A).

The question was called. Motion carried unanimously.

Moved by Poole/C. Palmer to request that a title search be conducted on the boundaries of the Airport with the cost to be paid by the Airport.

Mrs. Palmer said she seconded the motion since it was worded as a "request." She added that she believes establishing the legal boundaries would be helpful.

Mr. Palmer asked the City Attorney if he felt that a title search was necessary. Mr. Gougelman said we will need a title search on the area outlined on the map in blue to determine who has title and to ensure that no deed of release by the federal government has been filed.

A brief discussion followed regarding an amendment to the motion to provide that a title search be done on the blue areas only.

Poole/C. Palmer amended the motion to provide that a title search be done on only the areas outlined on the map in blue.

The question was called on the motion and the amendment. Motion carried unanimously.

By consensus, Council agreed to address the membership issue after the title search has been completed.

6. Discussion of R-1B Zoning

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Due to the time, Mayor Buckley said that this item will be postponed until the July 9 agenda, unfinished business.

- 6.1 COUNCIL ACTION RE: Authorization for the city to participate in litigation with the Florida League of Cities to challenge the constitutionality of the police officers' presumption (SB 108, Ch. 02-236, Laws of Florida) (Added to the agenda)

From the City Manager's memo: The new law, which is effective July 1, 2002, provides that a police officer totally or partially disabled due to tuberculosis, heart disease or hypertension is presumed to have suffered the illness "in the line of duty." This presumption results in a significant unfunded mandate for the cities and counties regarding workers' compensation and disability expenses.

The Florida League of Cities is going to challenge the constitutionality of the new law. It has asked the cities to serve as a party in the litigation to assure standing to the challenge. The League will pay all costs associated with the litigation.

Moved by Buckley/C. Palmer to authorize the city to participate in litigation with the Florida League of Cities to challenge the constitutionality of the police officers' presumption.

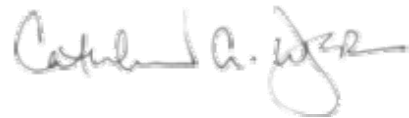
Mrs. Poole asked what would happen if an officer did contract one of these illnesses in the line of duty. Mayor Buckley said they would already be covered. The new law presumes that no matter what, the illness was contracted in the line of duty.

The question was called. Motion carried unanimously.

7. Adjournment

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

The meeting adjourned at 11:50 p.m.



City Clerk – 7/9/2002

Approved by Council: _____