

CITY OF MELBOURNE, FLORIDA
MINUTES – SPECIAL MEETING BEFORE CITY COUNCIL
SEPTEMBER 16, 2004



A special meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 5:30 p.m. by Mayor John A. Buckley.

1. Pledge of Allegiance.
2. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Vice-Mayor, District 5 (arrived 5:33 p.m.)
	Loretta Isenberg-Hand	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Suzanne Novak	Assistant City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager

3. COUNCIL ACTION RE: Temporary suspension of the City's Noise Ordinance as it relates to the use of generators during emergency conditions or extraordinary circumstances.

Mayor Buckley announced that this meeting has been called for the purpose of whether to adopt an emergency ordinance relating to an exemption from the Noise Ordinance for generators used to supply electricity after a natural disaster. He asked that anyone wishing to speak to direct his or her comments to the ordinance.

City Attorney Paul Gougelman read Emergency Ordinance No. 2004-72 by title. Mayor Buckley asked if anyone wished to speak on this item.

Gerry Becker, 2803 Cameron Street, spoke in support of the ordinance. He reported that his family was without power for over 10 days. After five days he obtained a generator. Mr. Becker referenced the Council minutes from July 2002 when the current Noise Ordinance was adopted. He pointed out that Council Member Cheryl Palmer mentioned at that time that generators should be allowed during a power outage.

Mrs. Palmer arrived at 5:33 p.m.

Mr. Becker concluded by expressing appreciation to Council for addressing this situation during a special meeting.

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Attorney Gougelman stated that Assistant City Attorney Suzanne Novak prepared the emergency ordinance. Ms. Novak is considered our “resident expert” on the Noise Ordinance. He added that under Florida Statutes, an emergency ordinance can be adopted by a two-thirds vote; therefore, this item will require five favorable votes. Under the Charter, the emergency ordinance will only be effective for 30 days. Staff proposes to bring back an ordinance that would provide for a permanent change to the City Code.

Mayor Buckley stated “so directed” regarding preparation of an ordinance that would provide a permanent change to the City Code.

Moved by Contreras/C. Palmer for approval of Emergency Ordinance No. 2004-72.

Mayor Buckley stated that he is in favor of the ordinance.

Council Member Loretta Hand said that she spoke with the City Attorney prior to this meeting about the need to tweak the Noise Ordinance, aside from the emergency issue, with regard to commercial/industrial operations located next to residential areas. She specifically mentioned the on going problems with the cement plant.

With regard to the emergency ordinance, Mrs. Hand said that she feels there should have been compassion by Deputy Chief Short. She added that this issue has given Melbourne a black eye. And, she questioned how anyone could expect a female to sleep outside on a porch and be exposed to robbery, burglary, etc.

Vice Mayor Cheryl Palmer said that she believes the City owes an apology to anyone who was asked to turn off their generator in this time of emergency. She agreed that Deputy Chief Short followed the letter of the law; however, he did not follow the spirit. Mrs. Palmer said that it is Council’s responsibility to make the change and move forward.

Council Member Grace Walker said that she has received many calls from people who are upset that this action was taken and that the Police Chief seems to have approved the Deputy Chief’s actions. She added that she is glad that this ordinance is before Council.

Council Member Ed Palmer said that in a situation such as a hurricane common sense must prevail. He stated that generators are needed for our residents’ health, safety and welfare. This is a bad situation that has given the City a bad name. Mr. Palmer noted that this is history; remedial action will be taken so this does not happen again.

Council Member Pat Poole said she resents that the newspaper has stirred everyone up with one case. She reported that she has lived in the same house since she was six years old and she does not have air conditioning. She added that migrants and others who can’t afford air conditioning survive. Mrs. Poole stated that if people have health issues related to the heat, they can stay in a shelter. She concluded by saying

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she is not going to vote for this item and that Council should take its time in reviewing this issue.

Council Member Richard Contreras said he spoke to Ms. Gutierrez (Deputy Chief Short's neighbor) today and he apologized for himself. He added that as he understands the issue, other people have complained about generators being too loud; this is not an isolated incident or case. Mr. Contreras said that to the credit of Code Compliance, they have worked with people to relocate the position of generators, provide buffers/barriers, etc. He added that this is an unfortunate moment and he supports this action as well as the follow-on action.

A brief discussion followed regarding why it has taken Florida Power and Light so long to restore power.

Mrs. Palmer reported that in her neighborhood a really large pine tree is leaning over and threatening a home (the owner is absentee). Mrs. Palmer said that this is probably not an isolated incident. She would like to know if the City can take action to correct a dangerous situation on a property when the owner can't be contacted.

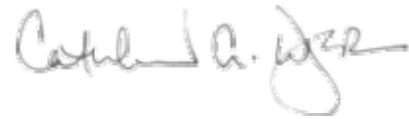
Mayor Buckley asked the City Manager to look into this.

The question was called. Motion carried. Mrs. Poole voted nay.

4. Adjournment

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

The meeting adjourned at 5:47 p.m.



City Clerk – 10/4/2004

Approved by Council: October 12, 2004