



**CITY MANAGER'S AGENDA REPORT**  
**REGULAR MEETING OF NOVEMBER 24, 2009**

**Item No. 8 - Ordinance No. 2009-34 (LDR-2009-02/FOC-2009-02) Sign Code**

This is the continued second reading of an ordinance repealing Chapter 25 of the City Code, entitled "Signs and Advertising" and adopting a new Chapter 11 in the Land Development Code, Appendix D, relating to signs and advertising.

The City's sign ordinance was originally adopted in 1980 and was updated approximately seven times since its adoption. In 2005, an opinion issued by the Eleventh Circuit Court of Appeals in Solantic, LLC v. City of Neptune Beach, 410 F. 3d 1250 (11<sup>th</sup> Cir. 2005) raised the concerns of many jurisdictions about the constitutionality of their sign codes. Accordingly, the City of Melbourne began an effort in 2006 to revise its sign code in order to comply with constitutional content-neutrality and prior restraint issues identified in the Solantic opinion.

City staff members and legal counsel have generated numerous drafts and devoted substantial time and study in order to propose a revised sign code that protects the right of free speech and expression in the display of signs while providing the minimum amount of control necessary to promote the health, safety and welfare of the citizens of Melbourne. The proposed ordinance also addresses many of the non-free speech signage problems that staff frequently encounters under the current sign code. Staff members and legal counsel have conducted a public workshop, received comments from the public and from representatives of the sign industry, and addressed historic and recurring issues relating to signs in the City of Melbourne.

The attached staff memorandum describes the proposed ordinance and the five primary areas in which the proposed ordinance differs from the existing ordinance:

- Overall increase in the amount of signage available in residential, commercial and industrial zoning districts
- Specifically allows for murals in commercial zoning districts
- Regulates the location of changeable copy signs to arterial roadways and provides for minimum display time of 10 seconds
- Prohibits signs in the rights of way except for government signs and signs required by law to be erected in the rights of way
- Limits variances to address height and set back only

**Action after first reading:**

During the September 15, 2009 public hearing conducted on the first reading of the proposed ordinance, several questions and issues were raised by both the Council and members of the public who spoke on the proposed ordinance. At the direction of Council, staff addressed those issues and questions during the October 27, 2009 public hearing on second reading as follows:



1. Staff interprets the proposed sign code to permit individual parcel owners in commercial and industrial subdivisions to display a message on the permitted subdivision sign at the entrance to the commercial subdivision on a tract of land jointly owned and maintained by all owners of the platted lots as an “on-premises” sign.
2. Staff interprets the request to include the name of the commercial center on an entry feature wall as directional in nature, and therefore permissible under the proposed ordinance so long as the text size complies with the size limitation for directional signage.
3. Staff does not support allowing variances as to size or number of signs, because the proposed sign ordinance was specifically designed to allow signage consistent with the scale of the building or development, and allows for more signage (both ground and building) for larger parcels along with the flexibility to allocate sign square footage in the manner that best suits the business.
4. Staff supports the proposed increase in the amount of signage available for large parcels with substantial linear roadway frontage.
5. With regard to enhanced enforcement of the prohibition on signs in the right of way, staff will simply remove the unlawful signs until such time as the City Council directs staff to develop and implement a more comprehensive system of enforcement.
6. With regard to the maximum brightness levels of changeable copy LED signs, staff will continue its survey of the ordinances of other jurisdictions that have adopted brightness standards and its examination of the technical issues relating to this type of lighting. Staff may report to Council within three to six months with the results of its research and a recommendation concerning an appropriate brightness standard, if necessary. At this time, staff believes the use of the environmental standard controls set forth in Chapter 20 of the Code of Ordinances are adequate to regulate sign brightness.
7. Merchants in the redevelopment areas are currently authorized under the zoning code to utilize A-frame type signs, and until such time as staff is able to prepare the appropriate revisions to the Zoning Code, merchants will be able to continue to utilize them, thus allowing the merchants a period of transition. Staff is working on a ‘wayfinding’ sign project to implement pedestrian-oriented signage in the CRAs.

**Action after second reading:**

During the October 27, 2009 public hearing on second reading of Ordinance 2009-34, Council continued the public hearing and directed staff to amend the proposed ordinance to allow (i) banners within service bays, (ii) large inflatable signs with a special activity permit, and (iii) non-residential platted subdivisions to have the option to elect between two alternatives for subdivision signs.



Additionally, Council directed staff to respond to a sign company's request to allow changeable copy signs on collector and local roads in addition to arterial roads, and to respond to a Council Member's request to allow off-premises signs within a certain distance of the premises being advertised.

In accordance with Council's instructions, staff revised the proposed ordinance:

- To allow banners in service bays and viewable from the right of way as temporary window signs;
- To allow large inflatable signs with a special activity permit; and
- To provide two subdivision sign options for non-residential platted subdivisions.

With regard to the issues concerning changeable copy signs on collector streets and off-premises signs, staff responds as follows:

1. Staff does not support allowing changeable copy signs on collector or local roads because collector and local roads are generally dominated by residential uses. The largest and most common non-residential uses on collector and local streets are churches and schools whose campuses frequently have additional frontage on nearby arterial roads, which is the appropriate location for their changeable copy signs. Such signs will have a negative impact on the residential character of neighborhoods on collector and local streets, and are inconsistent with the appearance and aesthetics of a residential area. Staff recommends that changeable copy signs remain limited to arterial roads only.
2. The City's existing sign ordinance prohibits off-premises advertising, and staff does not support any change that would allow off-premises signs at any distance from the activity advertised. To allow some off-premises signs is to allow all off-premises signs, and there is no rational basis for allowing off-premises signs within a prescribed distance of the advertised activity and not allowing off-premises signs beyond that prescribed distance. Creating exceptions for off-premises signs will result in the proliferation of signs, which is contrary to the express purpose of the sign ordinance.

**Recommend approval of Ordinance No. 2009-34 based upon the findings contained in the Planning and Zoning Board memorandum.**

**Item No. 9 - Ordinance No. 2009-43 (CU-2009-12/SP-2009-10) 4855 Wickham Center**

At the November 10 meeting, this item was postponed at the request of the applicant.

This is the second reading of an ordinance granting a conditional use with site plan approval to modify a previously approved conditional use and site plan to develop a mini-storage building and three single-story office retail buildings, on a 6.05± acre property located on the southeast corner of Wickham Road and Mariah Drive. The property is



zoned C-C-2 (General Commercial with a conditional use to allow a mini-storage building) with a Commercial Future Land Use designation.

There are two requested changes to the approved conditional use/site plan. First, the applicant has re-entered into discussions with Brevard County regarding a right-in driveway access from Wickham Road into the property. A similar access had been approved with the 2003 conditional use approval; the County denied that access during construction plan review, thus requiring the 2005 re-approval. The County has recently issued the applicant a permit for the Wickham Road driveway.

The second requested change is relative to the total number of units within the un-built storage building. Previous approvals permitted a maximum of 600 units. The proposed plan reduces the overall number of storage units to 360. The applicant is proposing to resize these units within the existing footprint approved with the 2005 conditional use/site plan; however, by City Code, the units may not exceed 400 square feet in size.

The former conditional use and site plan will be repealed if this request is approved.

The Planning and Zoning Board voted unanimously to recommend approval of this request at its October 1, 2009 meeting.

**Recommend approval of Ordinance No. 2009-43 based upon the findings and conditions contained in the Planning and Zoning Board memorandum.**

**Item No. 10 - Release of Federal Aviation Administration (FAA) Deed Restrictions**

At the November 10 meeting, the motion for approval failed by a 3-2 vote. (Aye: Nowlin, Meehan and Tasker. Nay: Corby and LaRusso.) A motion was made by LaRusso/Meehan to reconsider and it passed unanimously.

The item returns on this agenda with the following motion on the floor:

**Moved by Tasker/Meehan for approval.**

Following up on the 2002 direction from City Council to purchase FAA deed restrictions from properties the City leases from the airport, staff is requesting authorization from Council to pay the Airport Authority \$1,280,079, payable over 11 years, in exchange for the release of FAA deed restrictions on three parcels used for water and sewer utility purposes. The three parcels are:

DB Lee Parcel: 2009 Appraisal: \$900,000

Currently leased as wastewater treatment plant; consisting of 12.5 acres near Apollo Boulevard and Sarno Road

Expansion Parcel: 2009 Appraisal: \$440,000

Adjacent to current wastewater treatment plant and targeted for expansion of same in the next year; consisting of 2.802 acres near Apollo Boulevard and Sarno Road



Hibiscus Parcel: 2009 Appraisal: \$75,000

Currently leased as water holding tank; consisting of 0.517 acres near Hibiscus Boulevard and Woody Burke Road

By purchasing the release of FAA deed restrictions on three parcels for \$1,280,079, the City's Water and Sewer Utility System will save between \$1.4 million and \$3.7 million in lease payments over the first 30 years and will not be required to negotiate future leases for use of the three parcels, thus reducing future Water and Sewer System costs as compared to the current commitment.

By way of example, in 1984 the City purchased land from the Airport that is now the Apollo Police Department Headquarters. The City paid a total of \$199,499.40 for the land inclusive of 10% interest. If the City had leased this same land since that time, the total lease payments would have been \$359,364, and the annual lease payments would still be continuing in the future.

**Recommend the City accept an offer for the release of FAA deed restrictions on three properties used for City utilities in exchange for \$1,280,079, paid over 11 years, thereby transferring control of the properties to the City, and authorization for the City Manager to execute appropriate documentation to implement same.**

#### **Item No. 11 - Council Policy**

This item was postponed at the November 10 meeting at the request of Council Member Thomas to allow discussion/consideration by a full Council.

At the October 13 meeting, Council Member Corby asked for a future agenda item on the following City Council rule of procedure (adopted by Resolution No. 3040):

Rule 3 – Debate.

- (c) Council Member speaking on agenda items. A Council Member may speak no more than 10 minutes on any one item. The City Council by majority vote may extend an individual Member's discussion beyond 10 minutes.

If any changes are made to this rule, a resolution would return on the December 8 agenda for Council consideration.

#### **Item No. 12 - Consent Agenda**

- a. Contract award for the rental of six vehicle for 11 months for the Police Department, Enterprise Rent-a-Car, Orlando, FL - \$56,100.
- b. Purchase of 26,400 pounds of Hychem LC-214-PWG dry polymer, LeahChem Industries, Inc., Cocoa, FL - \$43,824.



- c. Contract award for lube oils, Glover Oil Company, Melbourne, FL - at unit prices; estimated six month cost of \$30,000.
- d. **Resolution No. 3101:** A resolution supporting the creation of a County-wide Criminal Justice Advisory Commission.
- e. **Resolution No. 3102:** A resolution revising the investment policy for the investment of surplus funds.

### **Item No. 13 - Items Removed from the Consent Agenda**

At this time Council will address any items that are removed from the Consent Agenda.

### **Item No.14 - Ordinance No. 2009-45 (CU-2009-11) Greater Allen Chapel AME Church (2416 Lipscomb Street)**

This is the first reading of an ordinance granting a conditional use to allow the expansion of a paved parking lot at a previously approved church facility on an overall 1.28±-acre parcel of land, zoned R-1A (Single-Family Low Density Residential District) with a Commercial/Low Density Residential Future Land Use designation. The property is located on the northwest corner of Lipscomb Street and Line Street (2416 Lipscomb Street) in Township 28, Range 37, Section 3.

The applicant is requesting a conditional use to expand and pave an existing church parking lot. A portion of the parking area was not contained within the original 1989 conditional use and the expanded area requires a conditional use to be approved since it is zoned residential. Places of worship require a conditional use in the R-1A zoning district. The conditional use standards are presented in Appendix B, Article IX, Section 5. A portion of the area already contains an unpaved parking area. Once the improvements are made, 60 parking spaces will be available.

The Planning and Zoning Board voted unanimously to recommend approval of this request at its November 5, 2009 meeting.

**Recommend approval of Ordinance No. 2009-45 based upon the findings and conditions contained in the Planning and Zoning Board memorandum.**

### **Item No.15 - Ordinance No. 2009-46 (CU-2009-13) Lime Cactus, LLC (811 East New Haven Avenue)**

This is the first reading of an ordinance granting of a conditional use to allow consumption of alcohol on the premises within an existing building zoned C-3 (Central Business District) on a portion of an overall 0.21± acre site with a Commercial/High Density Residential Future Land Use designation. The property is located on the south side of East New Haven Avenue, west of Vernon Place, and east of Waverly Place, and will occupy the easternmost business unit of the existing building currently identified as 811 East New Haven Avenue.



The applicant is requesting approval of a conditional use to allow the consumption of alcohol on the premises. The sale of alcohol for consumption on the premises, not in conjunction with a restaurant, requires a conditional use in the C-3 zoning district.

The proposed business is to be located in the commercially developed downtown area. The applicant will be occupying the easternmost unit within the building, which is approximately 1,969± square feet (15.77' x 124.88') in size, including restrooms and a storage area. The proposed use (primarily consumption of alcohol with no substantial food service) is to remain wholly within the building. Due to the unique dimensions of the building (less than 16 feet wide and 124 feet long), the applicant is proposing a maximum occupancy (employees and customers) of 49 people. The proposed hours of operation are Tuesday through Saturday, from 6:00 p.m. until 2:00 a.m.

The Planning and Zoning Board voted unanimously to recommend approval of this request at its November 5, 2009 meeting.

**Recommend approval of Ordinance No. 2009-46 based upon the findings and conditions contained in the Planning and Zoning Board memorandum.**

#### **Item No. 16 - Implementation of the Downtown Melbourne Parking Management Plan**

This is a request for approval of the implementation of the parking management plan and approval of the preliminary parking budget, which includes hiring two part-time parking enforcement specialists, the purchase of appropriate enforcement equipment, and the purchase of garage payment equipment.

As discussed during several past City Council meetings, City staff has been working on a parking management plan that incorporates the new parking garage and surrounding parking areas in the downtown vicinity. The plan was presented during a workshop with the Downtown Melbourne Community Redevelopment Agency (CRA) Advisory Committee on November 6. The committee recommended approval of the plan with a minor modification. Many questions and ideas were heard from approximately 30 people in attendance. To the extent possible, many of these ideas have been incorporated into the proposed plan. Several ideas for longer term solutions will also continue to be considered and researched by City staff.

The plan was designed with the following objectives: to be simple and understandable for all parties utilizing the garage and downtown parking; to provide enhanced downtown parking and accessibility to highly utilized parking locations; to require the fewest amount of changes to the existing parking system; to endeavor to keep additional costs and staffing as low as possible; and to generate some revenue to cover the operating expense of the garage.

The attached memorandum details the proposed parking management plan. It is broken into three categories: on-street parking, off-street public parking lots, and the City Hall



site. The plan takes into consideration the following parking patrons: City Hall visitors, City Hall employees, downtown employees/merchants, downtown visitors, and downtown residents.

The proposed change to the on-street parking will be an additional two hours of enforcing the three-hour parking timeframe in the evening, along with the addition of signage on several streets. The proposed change to the off-street public parking lots will be a new three-hour maximum timeframe on the Vernon Lot and the Strawbridge Lot.

On the City Hall site, designated City Hall spaces will be provided in the new surface parking lots on site. Employees of both the City and downtown businesses will have the opportunity to purchase monthly passes to park in the garage. Ample free parking for City employees will be provided on the 5<sup>th</sup> floor of the garage and the adjacent parking lot, east of the Florida East Coast Railway (FECR). Visitors desiring to have covered and/or long-term parking will have the ability to pay a nominal fee to park in the garage.

The success of the parking system is predicated on the need for enhanced parking enforcement in the downtown area. Enforcement of all downtown parking is very critical and will need to be provided daily by parking enforcement specialists, who are provided the capability to move quickly throughout the downtown area.

Additionally, assistance with the security of the garage will be necessary from the Police Department to schedule regular patrols in the garage to deter unwanted activities.

Also included in the attached memorandum is a proposed budget. The budget reflects the hiring of two part-time parking enforcement specialists, who have received appropriate State required certification to perform these duties. Additionally, the expenditure of funds for capital expenses will need to occur prior to implementation. Approval of a formalized Parking Budget will occur during the First Quarter Budget Review process and future revenues generated from the parking management system will be directed to this budget.

At this time, the parking garage is on schedule to open at the beginning of December. Due to the complexities of implementing a parking management program, it is anticipated that the implementation of this parking plan will not occur until early 2010. When the garage is opened in December, signage indicating that parking rates will be implemented in early 2010 will be posted in visible locations so that all patrons are aware of the parking rate structure.

**Recommend approval of the implementation of the parking management plan as outlined in the staff memorandum and approval of the preliminary parking budget including the hiring of two part-time parking enforcement specialists, the purchase of appropriate enforcement equipment, and the purchase of garage payment equipment.**



### **Item No. 17 - Melbourne Light Parade Funding Request**

*Council will convene as the Melbourne Downtown Community Redevelopment Agency for this item:*

On November 10, 2009, the City received a letter of request from the Melbourne Light Parade, which is the non-profit organization that organizes Melbourne's holiday parade. The letter indicates the organization's plight in raising enough funding to cover the anticipated cost of City Services for the event. Because the event is at night and due to its popularity and size, police costs associated with the event are substantial. Further, the letter specifically requests funding from the Babcock Street and Downtown Melbourne Community Redevelopment Areas (CRA) to fill the funding gap.

Due to the timing of the appeal, the Melbourne Downtown Community Redevelopment Agency (CRA) Advisory Committee was not able to consider the request for a recommendation to City Council. The attached funding request is being presented directly to the City Council/Downtown Melbourne CRA Board for support of the annual Melbourne Light Parade.

Planning and Economic Development staff has reviewed the request and determined that support from the Downtown CRA to Melbourne Main Street, as co-sponsor of the event, would be appropriate if the CRA Board believes it is a beneficial use of CRA funding. The Melbourne Light Parade indicates a funding gap of \$11,000. Calculation of City services for the special event is in the area of \$10,000 to \$12,000. The Melbourne Light Parade has determined that half of the event costs, if covered by the Downtown CRA, would allow the event to move forward. If there is no funding provided, the event will likely be cancelled. The Downtown Melbourne CRA has \$6,000 available within the 2009-2010 budget for events requiring City services. Unless specified otherwise by the CRA, the parade organizers have been advised this funding is unlikely to be recurring.

**Recommend approval of \$6,000 in Downtown Melbourne CRA funding to Melbourne Main Street, Inc., from the 2009-2010 CRA Budget #533010 ("Services Provided by GF").**

*Council will reconvene for the remaining agenda items.*

### **Item No. 18 - Legislative Priorities for the 2010 Legislative Session**

The Brevard Legislative Delegation is scheduled to meet in the Brevard County Commission Chambers on November 30, 2009 at 3:00 p.m. Attached is a memo from Deputy City Manager Amy Elliott providing a list of proposed legislative priorities to be presented to the Brevard Legislative Delegation for action during the 2010 Legislative Session.

Staff requests the Legislative Delegation sponsor and support legislation to further the City's interests as stated in the legislative priorities. These also provided the basis for elected officials, staff, and the lobbyists to advance ideas and interests in various



subsequent meetings, conferences, and consultations. Council has also traditionally included endorsement of the Florida League of Cities' agenda even though it is broadly based. Council may wish to add other topics or delete topics from this list.

**Recommend approval of legislative priorities and transmittal to the Brevard Legislative Delegation.**

**Item No. 19 - Board Appointments**

- a. Appointment of two members to the Library Board.
- b. Appointment of three regular members to the Planning & Zoning Board.
- c. Appointment of two regular members to the Zoning Board of Adjustment.