

## CITY OF PALM BAY, FLORIDA

### REGULAR COUNCIL MEETING NO. 2008-11

Held on Thursday, the 3<sup>rd</sup> day of April 2008, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 7:07 P.M.

Rabbi Fred Natkin, Congregation M'Ateh Chaim, Palm Bay, gave the invocation, which was followed by the Pledge of Allegiance to the Flag.

<b>MAYOR:</b>	John J. Mazziotti	Present
<b>DEPUTY MAYOR:</b>	Ed Geier	Present
<b>COUNCILMEMBER:</b>	Patrick Woodard	Present
<b>COUNCILMEMBER:</b>	Milo Zonka	Present
<b>COUNCILMEMBER:</b>	Kristine Isnardi	Present
<b>CITY MANAGER:</b>	Lee Feldman	Present
<b>DEPUTY CITY ATTORNEY:</b>	James Stokes	Present
<b>DEPUTY CITY CLERK:</b>	Terese Barber	Present

**CITY STAFF:** Present were Sue Hann and Jon Lewis, Deputy City Managers; and David Watkins, Growth Management Director.

#### **ANNOUNCEMENTS:**

Mayor Mazziotti announced the following vacancies and solicited applications for same:

- 1. Three (3) vacancies on the Board of Adjustments and Appeals (represents 'architect', 'fire safety' and 'engineer' positions).**
- 2. Two (2) vacancies on the Building and Construction Advisory Committee (represents 'general contractor' and 'residential contractor' position).**

☞ Mary Greene announced the Arthritis Foundation would be sponsoring a walk on May 17<sup>th</sup> at Fred Lee Park and encouraged citizens to participate. May was Arthritis Awareness Month.

#### **PROCLAMATIONS:**

- 1. Administrative Professionals Week - April 20-26, 2008.** Mayor Mazziotti read the proclamation and presented it to Anne Daven and Chandra Powell, Executive Officers of the International Association of Administrative Professionals.

**DEPARTMENTAL REPORT:**

**1. Human Resources Department – update.** George Hunt, Human Resources Director, provided an update on the department's activities.

**AGENDA REVISIONS:**

Mr. Feldman advised the City Council that Item No. 17, under Public Hearings, had been withdrawn by the applicant.

**CONSENT AGENDA:**

All items of business marked with an asterisk were considered under Consent Agenda and enacted by the following motion:

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, that the Consent Agenda be approved as presented with the removal of Item No. 10, under New Business, from consent. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**ADOPTION OF MINUTES:**

**\* 1. Regular Council Meeting No. 2008-09; March 20, 2008.**

The minutes, considered under Consent Agenda, were approved as presented.

**PUBLIC HEARINGS:**

**1. Ordinance No. 2008-06, extending the time period for meeting conditions for vacating the road right-of-way known as Forest Knoll Circle (Case No. VRW-1-2007, Palma Bella Development, LLC), for final reading.**

The Deputy City Attorney read the ordinance in caption only. The public hearing was opened. A representative for the applicant was present to answer questions. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-06. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**2. Ordinance No. 2008-07, extending the time period for meeting conditions for vacating the side and portions of the rear public utility and drainage easements within Lots 20, 21, 22, 23, and 24, Block B, Pinehurst Subdivision (Case No. VE-2-2007, Palma Bella Development, LLC), for final reading.**

The Deputy City Attorney read the ordinance in caption only. The public hearing was opened. A representative for the applicant was present to answer questions. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-07. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**3. Ordinance No. 2008-08, amending the Code of Ordinances, Chapter 116, Wrecker Service, by removing non-revenue tows from the wrecker company rotation list and awarding non-revenue tows to a single company, for final reading.**

The Deputy City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-08. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**4. Ordinance No. 2008-09, creating the Dangerous Intersection Safety Act (Red Light Camera Program), for final reading.**

The Deputy City Attorney read the ordinance in caption only. The public hearing was opened. Several residents objected to the red light cameras and elaborated on their reasons for same. The public hearing was closed.

Mr. Stokes left the meeting at this time and did not return. Mr. Tsamoutales joined the meeting and remained for the duration of the meeting.

Mrs. Isnardi asked that revenues go towards a non-profit organization or an organization within the City that benefited the residents, i.e., Police Athletic League. It was an issue of public trust and she did not want the monies to go into the General Fund.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to adopt Ordinance No. 2008-09. Deputy Mayor Geier wanted it to be cost effective and was agreeable to giving any profits to a non-profit organization after costs were deducted. Mr. Woodard stated there was pending legislation at the state level that would limit the amount of money to be collected by the municipalities. He did not feel it should be a revenue generator for the City and agreed

with any revenue after operation costs being given to an organization. He expressed concern over the owner of the car being cited and not the driver. He wanted to ensure the timing of the yellow light would not be shortened. Mr. Woodard was in favor of investigating the issue and conducting studies to determine if a safety benefit was derived. Mayor Mazziotti questioned how the organization would be selected. He suggested that the Police Chief be involved in the selection. Mr. Zonka supported giving the revenues to an organization.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka to approve Ordinance No. 2008-09 with the caveat that staff submits a list of City non-profit organizations in order to select one to receive the revenues. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**5. Ordinance No. 2008-10, amending the Fiscal Year 2007-2008 budget by appropriating and allocating certain monies (second budget amendment), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-10. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**6. Ordinance No. 2008-11, vacating the side and rear public utility and drainage easements located within Lots 8, 9, 10, 11, 12, 13, and 14, Block 201, Port Malabar Unit 7 (Case No. VE-5-2008, Henry Morin), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. Mr. Morin was present to answer questions. The public hearing was closed.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to adopt Ordinance No. 2008-11. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**7. Ordinance No. 2008-12, amending the Comprehensive Plan Future Land Use Map to change the designated use of certain property from Single Family Residential Use to Commercial Use (5.18 acres)(Case No. CP-14-2007, C. Douglas Engle), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-12. Mr. Zonka disclosed he had a pre-existing business relationship with one of the property owners and would be abstaining from voting. Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Yea
Councilman Woodard	Yea
Councilman Zonka	Abstained
Councilwoman Isnardi	Yea

**8. Ordinance No. 2008-13, amending the Comprehensive Plan Future Land Use Map to change the designated use of certain property from Single Family Residential Use to Commercial Use (7.07 acres)(Case No. CP-14-2007, C. Douglas Engle), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to adopt Ordinance No. 2008-13. Mr. Zonka disclosed he had a pre-existing business relationship with one of the property owners and would be abstaining from voting. Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Yea
Councilman Woodard	Yea
Councilman Zonka	Abstained
Councilwoman Isnardi	Yea

**♣9. Ordinance No. 2008-14, rezoning property located south of Malabar Road, in the vicinity east of Emerson Drive, from RR (Rural Residential District) to CC (Community Commercial District) and from HC (Highway Commercial District) to CC (Community Commercial District)(13.51 acres)(Case No. CPZ-14-2007, C. Douglas Engle), for final reading.**

There were no ex parte communications to be disclosed by Council.

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-14. Mr. Zonka disclosed he had a pre-existing business relationship with one of the property owners and would be abstaining from voting. Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Yea
Councilman Woodard	Yea
Councilman Zonka	Abstained
Councilwoman Isnardi	Yea

**10. Ordinance No. 2008-15, amending the Comprehensive Plan Future Land Use Map to change the designated use of property located in the vicinity east of Babcock Street, north of the proposed Palm Bay Parkway from Single Family Residential Use to Commercial Use (9.736 acres)(Case No. CP-7-2008, Cypress Bay Preserve, LLC), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-15. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**11. Ordinance No. 2008-16, amending the Comprehensive Plan Future Land Use Map to change the designated use of property located in the vicinity east of Babcock Street, north of the proposed Palm Bay Parkway from Single Family Residential Use to Commercial Use (9.164 acres)(Case No. CP-8-2008, Cypress Bay Preserve, LLC), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-16. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**12. Ordinance No. 2008-17, amending Ordinance No. 2007-94, which amended the Code of Ordinances, Land Development Code, Chapter 179, Streets and Other Rights-of-Way, by modifying procedures for the vacation or closure of public streets (Case No. T-6-2008, City of Palm Bay), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-17. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**13. Ordinance No. 2008-18, amending the Code of Ordinances, Land Development Code, Chapter 185, Zoning Code, Section 185.129, Model Homes, by revising provisions as they relate to a Planned Unit Development (Case No. T-9-2008, City of Palm Bay), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-18. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**14. Request by M. David Moallem to amend the Comprehensive Plan Future Land Use Map to change the designated use of property located at the southwest corner of Mercury Avenue and Lockheed Street, in the vicinity south of Malabar Road and east of Babcock Street, from Recreation and Open Space Use to Multiple Family Residential Use (2.77 acres)(Case No. CP-15-2007)(CONTINUED FROM RCM 03/20/08).**

The Recreation Advisory Board (RAB) recommended that the request be denied. The Planning and Zoning Board recommended that the request be approved for submittal to the Florida Department of Community Affairs for review and comment pursuant to Chapter 163, Florida Statutes, based on the existence of another designated park site in the area.

Mr. Feldman stated he had met with Mr. Moallem and discussed the following: 1) if Mr. Moallem would be interested in donating the property to the City for a park; 2) transferring development rights from the parcel to another parcel not currently designated as Open Space; and 3) explore a special assessment agreement in which the City would prepay the assessment and if, in the future, Mr. Moallem was granted a land use change, he would be required to pay the assessment plus five percent interest.

Mr. Moallem stated he was not the sole owner of the property, therefore, a swap for other property could not be considered. He also stated he was not in agreement with paying interest. He stated the property would not necessarily be developed as a park site as the City did not own it. He mentioned there was a lot of open space in the area, and into the

town of Malabar, that could be developed as parks. Mr. Moallem stated that development of the property would generate revenues versus it remaining idle. He said depending on how Council acted on the request at this meeting for changing the adjacent property to commercial, he may be seeking commercial zoning. He asked that the assessment be waived.

Mr. Feldman said the assessment would be deferred, not waived, until the property was used for something other than open space. This had been done for a church on another parcel in the assessment area. Mayor Mazziotti said the property would not be developed as a park as the City didn't own it. He said to leave it as it was would accomplish nothing. He recommended rezoning it.

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, to deny the request and enter into an agreement to defer the special assessment until the property was developed. Mr. Zonka did not want to make a decision that could ultimately be at the expense of the public. Deputy Mayor Geier felt that deferring the assessment was fair. Mrs. Isnardi said she had attended the RAB meeting and the Board unanimously felt the request should be denied. She said the Planning and Zoning Board approved the request based on the information that another available park site was in the area, not realizing it was a retention pond. She agreed with deferring the assessment. Mr. Woodard agreed that a special assessment should not be charged for property that could not be developed. He concurred with entering into an agreement structured after the one entered into by the church. Motion carried with members voting as follows:

Mayor Mazziotti	Nay
Deputy Mayor Geier	Yea
Councilman Woodard	Yea
Councilman Zonka	Yea
Councilwoman Isnardi	Yea

A brief recess was taken after which time the meeting reconvened.

**15. Ordinance No. 2008-19, amending the Comprehensive Plan Future Land Use Map to change the designated use of property located at the southeast corner of Lockheed Street and Thor Avenue from Multiple Family Residential Use to Commercial Use (1.46 acres)(Case No. CP-11-2008, Leo Badalamenti), for first reading.**

The Planning and Zoning Board recommended denial of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Stephen Badalamenti, the applicant's son, was present to answer questions. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mrs. Isnardi, to approve Ordinance No. 2008-19. Mr. Zonka said he agreed with the property owners in the area pertaining to the increased traffic. He said there were several properties in the area for sale that he felt could be considered to accomplish the purpose of the applicant's request. Mr. Watkins stated property owners within the area had expressed concern with the amount of traffic that would be generated through the neighborhood and the future use of the property. He stated that the generation of traffic by multi-family and commercial developments in the area would be comparable. Mr. Watkins addressed the aesthetics of the developments. Mr. Feldman reminded Council that quasi-judicial evidentiary testimony should not be considered in the land use change. Mrs. Isnardi felt the traffic issue would be relieved with the proposed request as the area was diverse in zoning districts. Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Yea
Councilman Woodard	Nay
Councilman Zonka	Nay
Councilwoman Isnardi	Yea

**♣16. Ordinance No. 2008-20, rezoning property located at the southeast corner of Lockheed Street and Thor Avenue from RM-20 (Multiple Family Residential District) to GC (General Commercial District)(1.46 acres)(Case No. CPZ-11-2008, Leo Badalamenti), for first reading.**

Councilmembers stated with whom they had ex parte communications in regards to the request.

The Planning and Zoning Board recommended denial of the request. The City Attorney read the ordinance in caption only. Speakers (witnesses) signed oaths declaring they would testify truthfully.

The public hearing was opened. Stephen Badalamenti, the applicant's son, stated currently there were no specific plans for the property, but it would be developed in a manner similar to other businesses in the area.

Mr. Watkins explained the rationale of the Staff Report and stated the requested zoning was consistent with the Commercial Land Use designation, as well as the character of the surrounding commercial area of GC.

Residents spoke against the rezoning due to the vehicle and foot traffic that would have to travel through the residential areas to get to the commercial property. A property owner was in favor of the rezoning and felt the surrounding properties should be zoned commercial. The public hearing was closed.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to approve Ordinance No. 2008-20. Mr. Woodard said that with the land use being changed, it would be hard for him to deny rezoning the property as it was now in conflict with the land use. He did not feel it was the best place for commercial, but could find no competent substantial evidence to vote against it. Mr. Zonka agreed. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**♣17. Resolution No. 2008-27, granting a conditional use for a self-storage facility in LI (Light Industrial Warehousing District) zoning on property located in the vicinity northeast of the intersection of Palm Bay Road and Lipscomb Street (16.11 acres)(Case No. CU-3-2008, Rochelle W. Lawandales).**

The item had been withdrawn by the applicant.

**♣18. Resolution No. 2008-28, amending the conditional use granted for an existing church in RS-2 (Single Family Residential District) zoning on property located north of and adjacent to Fallon Boulevard, in the vicinity south of Brookside Street, between Heather and Karney Avenues (2.77 acres)(Case No. CU-4-2008, George Dale DeCosta).**

There were no ex parte communications to be disclosed by Council.

The Planning and Zoning Board recommended approval of the request subject to all staff comments. The City Attorney read the resolution in caption only. Speakers (witnesses) signed oaths declaring they would testify truthfully.

The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Mr. Woodard, seconded by Mr. Zonka, to adopt Resolution No. 2008-28. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**♣19. Resolution No. 2008-29, amending the conditional use granted for an existing church in RS-2 (Single Family Residential District) zoning on property located north of and adjacent to Jupiter Boulevard, between Alvarado and Dominican Avenues (5.94 acres)(Case No. CU-5-2008, Glory Bound Church of God).**

There were no ex parte communications to be disclosed by Council.

The Planning and Zoning Board recommended approval of the request with the condition that the proposed driveway connection onto Alvarado Avenue be constructed two (2) lots north of Jupiter Boulevard and that the existing driveway on Jupiter Boulevard be restricted to a one-way entrance. The City Attorney read the resolution in caption only.

The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to adopt Resolution No. 2008-29. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**20. Request by Florida Land Fund II, LLC for approval of a final subdivision to be known as Palm Bay Place on property located at the northeast corner of Babcock Street and Malabar Road (22.77 acres)(Case No. FS-1-2008)(RESCHEDULED TO P&Z – 04/02/08).**

#### **BOARD AND COMMITTEE REPORTS:**

1. Mayor Mazziotti asked that the Municipal Charter School Authority be added to the board list.
2. Space Coast League of Cities - Mr. Woodard mentioned topics that were discussed at the League meeting.

#### **PROCUREMENTS:**

##### **Award of Proposal:**

- \* **1. Automotive body repairs – RFP No. 22-0-2008 (Craftmaster Auto Body).**

Staff Recommendation: Award the proposal for automotive body repairs on an “as needed” basis to Craftmaster Auto Body, West Melbourne.

The item, considered under Consent Agenda, was approved as recommended by City staff.

#### **Contracts:**

- \* **1. H.T.E. software maintenance, renewal (Sungard/H.T.E. - \$107,990).**

Staff Recommendation: Authorize the renewal of the H.T.E. software annual maintenance agreement with Sungard/H.T.E., Lake Mary, in the amount of \$107,990.

The item, considered under Consent Agenda, was approved as recommended by City staff.

## **UNFINISHED AND OLD BUSINESS:**

### **1. Appointment of one (1) member to the Economic Development Task Force (Mazziotti).**

Mayor Mazziotti appointed Tres Holton to the Task Force.

### **2. Discussion of Ordinance No. 2007-30, providing for locational requirements for adult entertainment establishments and sexually-oriented businesses.**

Michael Kahn, Special Counsel, stated he had been directed to prepare a locational ordinance for adult entertainment establishments. He stressed it was very important to enact a locational ordinance. He stated the two ordinances previously enacted by Council, the public nudity and regulatory, should not be relied upon to entirely prohibit the establishments. The City, by constitutional mandate, could not prohibit the establishments, but could regulate their locations in the city. Mr. Watkins reviewed potential sites throughout the City and explained the selection process that utilized parameters which were applied city-wide.

Deputy Mayor Geier stated there was one geographical location that had the number of sites required to be made available by the City versus twenty-one sites spread throughout the city. Mr. Woodard said his concern was designating one area where the sites would be concentrated. He felt the ordinance should state where the establishments could not locate which would eliminate the designation of any particular areas. Mr. Kahn felt the ordinance being proposed dispersed, rather than concentrated the sites, and specified the areas that adult establishments could not locate.

Motion by Deputy Mayor Geier to ban adult entertainment establishments from the City. Motion died for lack of a second.

Mr. Kahn wanted to revisit the dispersal method, formulate an ordinance, and present it at the next Council meeting.

Motion by Mr. Woodard, seconded by Mr. Zonka, to instruct legal counsel to prepare an ordinance with the dispersal method of location and to describe places that the adult establishments could not be located. Mr. Feldman asked that the ordinance be presented at the first meeting in May. Deputy Mayor Geier wanted the areas condensed more than what was presented. Mrs. Isnardi stated she was against adult establishments, but understood the law providing for same. Mr. Zonka said he would like to see a map indicating the locations that the establishments could currently locate versus the locations that would be prohibited once the ordinance was enacted. Deputy Mayor Geier stated that the concentrated area initially considered by Council would not be an area prohibited by

the ordinance. He felt by dispersing the sites, the control of same was being eliminated. Mayor Mazziotti opposed dispersing the sites. Motion carried with members voting as follows:

Mayor Mazziotti	Nay
Deputy Mayor Geier	Nay
Councilman Woodard	Yea
Councilman Zonka	Yea
Councilwoman Isnardi	Yea

### **3. Verbal report on indoor commercial recreation (adult arcades) (City Attorney).**

Mr. Tsamoutales advised that adult arcades were regulated by the Florida Statutes, but there were certain requirements that had to be met. He addressed the pending issues with the arcades, i.e., coins versus paper; chance versus skill.

He stated a bill was in legislation to modify the statutes and transfer the control and operation of adult arcades to a state entity. It also required an opinion from the Gaming Commission as to the legality of the machines in adult arcades when established. He would modify the current Code to delete the opinion required in same since it would be a requirement of the state legislation, as well as revise the definition for adult arcade.

Deputy Mayor Geier questioned if the City could charge and collect a fee per machine. Mr. Zonka felt it was gambling no matter what it was called and felt the secondary affects needed to be taken into consideration. Councilmembers discussed various aspects of adult arcades with two vendors from Melbourne. Deputy Mayor Geier wanted to wait until the legislation was considered at the state level.

A brief recess was taken after which time the meeting reconvened.

☞ Council concurred to consider Item No. 10, under New Business, at this time.

### **10. Consideration of the public service agencies to receive funding from the Fiscal Year 2008-2009 Community Development Block Grant Action Plan.**

Staff Recommendation: Approve the Fiscal Year 2008-2009 CDBG public service agency funding component of the Action Plan.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to approve the funding as recommended by staff. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

The regular agenda order was resumed.

**4. Consideration of the reorganization of the City Attorney's Office - a) Employment Agreement, Emeritus - City Attorney, Nick Tsamoutales.**

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, to forward the contract to Human Resources for review and verification of the contract language. Mr. Zonka said the language was unclear in some places and asked that the following points be clarified: a) \$100.00 an hour; b) contract for a three (3) period; c) life and health insurance benefits included; d) leave to be cashed out at rate of current contract.

Mr. Woodard also wanted clarification on some items such as: a) meaning of "attend all board meetings"; b) did the language of "an hourly compensation of \$100.00, not to exceed the amount of \$100,000.00 per fiscal year" mean that if the City Attorney wasn't directed to do anything, he wouldn't receive any salary. Deputy Mayor Geier mentioned that the City Manager's contract had been reviewed by the City's labor attorneys.

Mr. Feldman asked when Council wanted the contract to come back and if Human Resources could have outside counsel review it. Mr. Feldman felt the contract could be ready by the next meeting. He also stated that Human Resources should not be involved in the document's legal efficiency. There was Council consensus to have a labor attorney review the contract and the items requested to be clarified by councilmembers addressed. Mr. Woodard questioned the additional two year extensions as it read they were automatic, but required a majority vote of Council, and if not received would be considered termination without cause. Mr. Woodard mentioned that administrative and vacation leaves were in the contract, but not sick leave. He also expressed concern that the contract was not in the agenda packet and the public had not seen it. He questioned two references regarding representation not creating an impermissible conflict of interest. Mr. Woodard questioned the paragraph stating the agreement remained valid if provisions within it were found to be invalid by subsequent rulings from entities rendering or legislating otherwise. The City Attorney said courts gave preferential treatment to decisions of legislative bodies and contractual provisions spoke for themselves.

Mr. Feldman would work with the Human Resources Director in retaining legal counsel to review the document. Legal counsel or Human Resources would meet with Mr. Tsamoutales if there were questions regarding the interpretations of any provisions within the contract.

Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Yea
Councilman Woodard	Nay
Councilman Zonka	Yea
Councilwoman Isnardi	Yea

**PUBLIC COMMENTS: (Non-agenda Items Only)**

There were no public comments.

**COUNCIL BUSINESS:**

There was no Council business.

***MRS. ISNARDI:***

1. Felt the Recreation Advisory Board meeting was very productive; welcomed tanning business locating in Bayside.

**NEW BUSINESS:**

**\* 1. Resolution No. 2008-30, extending the commencement period for a conditional use granted for construction of a church in RM-20 (Multiple Family Residential District) zoning on property located south of and adjacent to Executive Circle, in the vicinity east of Interstate 95 (Case No. CU-9-2002, First Baptist Church of Palm Bay).**

The Deputy City Attorney read the resolution in caption only. The resolution was approved under Consent Agenda.

**\* 2. Resolution No. 2008-31, revising the City of Palm Bay's investment policy format.**

The Deputy City Attorney read the resolution in caption only. The resolution was approved under Consent Agenda.

**3. Ordinance No. 2008-21, amending the Code of Ordinances, Chapter 110, Business Taxes, by adjusting the fees for business tax receipts.**

The City Manager read the ordinance in caption only.

Motion by Mr. Zonka, seconded by Mrs. Isnardi, to adopt Ordinance No. 2008-21. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**\* 4. Ordinance No. 2008-22, amending the Code of Ordinances, Chapter 52, Boards, by providing for the collection of compound interest on code enforcement liens.**

The Deputy City Attorney read the ordinance in caption only. The ordinance was approved under Consent Agenda.

**\* 5. Ordinance No. 2008-23, amending the Code of Ordinances, Chapter 93, Real Property Nuisances, by providing for the collection of compound interest on nuisance liens.**

The Deputy City Attorney read the ordinance in caption only. The ordinance was approved under Consent Agenda.

**\* 6. Ordinance No. 2008-24, amending the Code of Ordinances, Chapter 118, Liens Levied Against Private Property, by providing for the collection of compound interest on liens on private property.**

The Deputy City Attorney read the ordinance in caption only. The ordinance was approved under Consent Agenda.

**\* 7. Ordinance No. 2008-25, amending the Fiscal Year 2007-2008 budget by appropriating and allocating certain monies (third budget amendment).**

The Deputy City Attorney read the ordinance in caption only. The ordinance was approved under Consent Agenda.

**\* 8. Consideration of extending the time frame for submission of a final Planned Unit Development application (Garvey Development, LLC, Case No. PUD-24-2006).**

Staff Recommendation: The City staff had no adverse comments to the applicant's request for an extension of one (1) year to the time frame for filing the final plat.

The item, considered under Consent Agenda, was approved as recommended by City staff.

**\* 9. Consideration of submitting a grant application to the Florida Department of Environmental Protection, Bureau of Invasive Plant Management, for the maintenance and management of exotic and invasive plant species on publicly owned conservation lands.**

Staff Recommendation: Authorize the City Manager to submit the grant application.

The item, considered under Consent Agenda, was approved as recommended by City staff.

**10. Consideration of the public service agencies to receive funding from the Fiscal Year 2008-2009 Community Development Block Grant Action Plan.**

The item was considered earlier in the meeting after Item No. 3 under Unfinished and Old Business.

**\*11. Consideration of expenditures from the Palm Bay Police Department's Law Enforcement Trust Fund (\$54,216).**

Staff Recommendation: Approve the funding as needed for the items listed in the memorandum.

The item, considered under Consent Agenda, was approved as recommended by City staff.

**\*12. Consideration of expenses for improvements to the Florida East Coast Railroad crossing at Palm Bay Road.**

Staff Recommendation: Approve the funding for repairs to the railroad crossing at Palm Bay Road in the amount of \$31,200.

The item, considered under Consent Agenda, was approved as recommended by City staff.

**\*13. Consideration of disposing of the Police and Fire Departments' radios as capital surplus property.**

Staff Recommendation: Approve the disposal of the capital surplus property as identified on the list provided.

The item, considered under Consent Agenda, was approved as recommended by City staff.

**14. Consideration of request from City of Titusville for a county-wide ordinance requiring the registration of beer kegs.**

Deputy Mayor Geier and Mr. Zonka expressed their support of same. Mr. Woodard felt it would only add another layer of bureaucracy and not achieve the true objective.

**15. Discussion on prohibiting the sale or distribution of alcoholic beverages on City Hall property (Mazziotti).**

Mayor Mazziotti asked if councilmembers were in agreement with the concept of prohibiting alcoholic beverages on the City Hall site. An ordinance would be submitted for consideration at the next Council meeting.

**ADMINISTRATIVE AND LEGAL REPORTS:**

1. Mr. Tsamoutales asked for an executive session to consider the United Third Bridge versus City of Palm Bay lawsuit. Council concurred to schedule a meeting for Thursday, April 10<sup>th</sup>, at 6:15 P.M.

**PUBLIC COMMENTS/RESPONSES:**

A citizen asked that maps accompanying agenda items discussed by Council be displayed on the screen for the public; asked that clarification be provided to the public as to which speaker card was to be completed for agenda items.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at the hour of 11:51P.M.

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John J. Mazziotti, MAYOR

ATTEST:

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Terese Barber, DEPUTY CITY CLERK

\* Identifies items considered under the heading of Consent Agenda.

♣ Indicates quasi-judicial proceeding.

☞ Indicates item was considered out of sequence or added to the agenda.