

## CITY OF PALM BAY, FLORIDA

### REGULAR COUNCIL MEETING NO. 2008-14

Held on Thursday, the 1<sup>st</sup> day of May 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 7:00 P.M.

Pastor Tom Walker, Zion Church, 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>CITY ATTORNEY:</b>	Nicholas Tsamoutales	Present
<b>DEPUTY CITY CLERK:</b>	Terese Barber	Present

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

#### **ANNOUNCEMENTS:**

Mayor Mazziotti announced the following vacancies, terms expiring, and new positions 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).**
- 3. One (1) term expiring on the Economic Development Task Force (represents 'president, homeowners association').**
- 4. One (1) term expiring on the Utilities Advisory Board (represents 'utility customer').**
- 5. Four (4) positions on the Community Development Advisory Board (represents 'employers within City; areas of labor in home building; essential services personnel; advocate for low-income persons').**
- 6. Restoration Advisory Board - Department of the Air Force - community participation in environmental cleanup activities.**

## **RECOGNITIONS AND PROCLAMATIONS:**

**1. Emergency Medical Services Week – May 18-24, 2008.** Mayor Mazziotti read the proclamation and presented it to Deputy Chief Stables, Palm Bay Fire Department.

**2. Recognition – Rolling Thunder – donation of POW flags to the Fire Department.** Doc Cooper explained that Rolling Thunder's major function was to publicize the POW-MIAs who were left behind from all the previous wars and to continue the search until all were accounted for or returned home. He presented flags, to be flown at City facilities, to Deputy Chief Stables, Palm Bay Fire Department.

**☛ National Volunteer Week – April 27-May 3, 2008.** Mayor Mazziotti read the proclamation and presented it to Tony Colandrea, V-Cop Recruiter/Trainer, Palm Bay Police Department.

**3. United Way of Brevard – Rob Rains, President – presentation of Campaign Achievement Award.** Mr. Rains presented a special campaign award to the City for the best increase in the County last year; recognized Mr. Feldman and Brad Johnson, Business Operations, Utilities Department.

**4. Utilities Department – recognizing employee promotions.** Jason Yarborough, Utilities Director, recognized and announced the names of the employees who had received promotions within the Utilities Department.

## **PRESENTATION:**

**1. Brevard Community College, Palm Bay Campus – Dr. James A. Drake, President, and Dr. Joe Lee Smith, Provost – update.** Dr. Smith provided an update on the College's activities. Dr. Drake spoke of the College's vision.

## **DEPARTMENTAL REPORT:**

**1. Growth Management Department - update.** David Watkins, Growth Management Director, explained the functions of each division. He expounded on the achievements and initiatives for the upcoming year.

## **AGENDA REVISIONS:**

Mr. Feldman asked that Item No. 10, under New Business, be removed from the agenda.

## **CONSENT AGENDA:**

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

Motion by Mr. Woodard, seconded by Mrs. Isnardi, that the Consent Agenda be approved as presented with the removal of Item No. 10, under New Business, from the agenda, and the removal of Item No. 12, 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. 2008-13; April 17, 2008.**

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

#### **PUBLIC HEARINGS:**

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

**2. Ordinance No. 2008-26, amending the Code of Ordinances, Chapter 171, Fair Share Impact Fees, Subchapter 'Transportation Facilities Impact Fee', by clarifying facilities eligible for impact fee expenditures and providing incentives for economic development (Case No. T-13-2008, 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 Mr. Woodard, seconded by Mrs. Isnardi, to adopt Ordinance No. 2008-26. 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. 2008-27, amending the Code of Ordinances, Chapter 185, Zoning Code, by consolidating the provisions for architectural style in one location and adding an appeals provision (Case No. T-14-2008, City of Palm Bay), for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. A resident felt it was a step in the right direction, but felt owners' rights to build what they wanted to build, as long as it was aesthetically pleasing, was an issue to be addressed. The public hearing was closed.

Motion by Mr. Woodard, seconded by Mr. Zonka, to adopt Ordinance No. 2008-27. Mayor Mazziotti asked several questions in regards to requirements. He felt there were too many constraints. Mr. Feldman responded to same. Mr. Zonka felt the ordinance was a good compromise to address some of the concerns discussed at Council's workshops. 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. 2008-28, amending the Code of Ordinances, Chapter 54, Franchises, by relocating Section 9, Water and Wastewater System Tariff, to the Land Development Code (Case No. T-8-2008, 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 Mr. Woodard, seconded by Mr. Zonka, to adopt Ordinance 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.

**5. Ordinance No. 2008-29, amending the Code of Ordinances, Chapter 181, Water and Sewers, by deleting obsolete and duplicate sections (Case No. T-7-2008, 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 Mr. Woodard, seconded by Mr. Zonka, to adopt Ordinance 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.

**6. Ordinance No. 2008-30, amending the Code of Ordinances, Chapter 54, Franchises, by repealing Chapter 54.50 in its entirety, 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 Mr. Zonka, to adopt Ordinance No. 2008-30. 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. 2008-31, amending the Code of Ordinances by creating Title XX, Chapter 200, Utilities Code, for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. A resident asked for an explanation on the fire protection charge. The public hearing was closed. Mr. Feldman explained it was for fire hydrants for commercial properties.

Motion by Mr. Woodard, seconded by Mrs. Isnardi, to adopt Ordinance No. 2008-31. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**8. Ordinance No. 2008-32, amending the Code of Ordinances, Chapter 96, Sewer Use, by relocating the chapter to Title XX, as Chapter 201, 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 Mr. Zonka, to adopt Ordinance No. 2008-32. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**9. Ordinance No. 2008-33, amending the Code of Ordinances, by relocating Subchapter 'Reclaimed Water', within Chapter 181, to Title XX, as Chapter 202, 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 Mrs. Isnardi, to adopt Ordinance No. 2008-33. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**10. Ordinance No. 2008-34, prohibiting alcoholic beverages on City Hall Municipal Complex property, for final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. A resident spoke in favor of the ordinance, stating it was appropriate for City Hall property. A resident expressed her opposition to the ordinance as she felt the City Hall property belonged to all. She said historically alcohol had been sold on the property for fundraisers for scholarships. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mr. Woodard, to adopt Ordinance No. 2008-34. Mayor Mazziotti, Deputy Mayor Geier, and Mrs. Isnardi stated the sale of alcohol should not be used for promotional functions or fundraisers. Mr. Zonka said a request had

been made to Council for the ordinance several months ago. Mr. Woodard supported the ordinance, but felt it should be part of the special events ordinance. 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. 2008-35, rezoning property located at the southeast corner of Malabar Road and Jupiter Boulevard from NC (Neighborhood Commercial District) to CC (Community Commercial District)(3.43 acres)(Case No. Z-11-2008, Stillwater Technologies, Inc.), for first reading.**

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

The Planning and Zoning Board recommended that the request be approved. The City Attorney read the ordinance in caption only.

The public hearing was opened. Speakers were sworn in as witnesses by completing written oaths. The applicant presented the request to Council. A resident adjacent to the property did not support the rezoning as her property would be surrounded by commercial. Residents felt the site could not accommodate the amount of pumps requested. The applicant explained the difference between fueling positions and dispensers as he felt the public was confused in regards to same. Mr. Watkins stated the request included the existing site that currently had a gas station and the additional property adjacent to the south and east of the site. The public hearing was closed.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to adopt Ordinance No. 2008-35. Deputy Mayor Geier stated he would not support the request as it was not compatible with the area. Mr. Woodard stated there was not competent substantial evidence to deny the request. Mrs. Isnardi would not support the request as it was adjacent to residential properties. Mr. Feldman stated the request was to rezone the property, and the conditional use request, which followed, should not be considered when rendering a vote. Motion carried with members voting as follows:

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

**♣12. Request by Stillwater Technologies, Inc. for a conditional use for retail automotive gas/fuel sales in CC (Community Commercial District) zoning on property located at the southeast corner of Malabar Road and Jupiter Boulevard (3.43 acres)(Case No. CU-12-2008).**

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

The Planning and Zoning Board recommended that the request be approved with the following conditions: a) the car wash adhere to the time constraints of the noise ordinance; b) a concrete wall be erected along the east boundary line with trees and natural buffers; c) a right turn lane be installed at the Jupiter Boulevard driveway; d) sidewalk construction timing be negotiated with staff; and d) frontage signs on Jupiter Boulevard and Malabar Road to have dark backgrounds.

The public hearing was opened. Speakers were sworn in as witnesses by completing written oaths. The applicant presented the request the Council and explained the details of the project. He agreed with the conditions established by the Planning and Zoning Board. He stated in regards to the right turn lane, it was already in place on Jupiter Boulevard; if an additional turn lane was being required, he would comply with same. Residents spoke against the request stating it was not the proper location for a gas station and asked if the access from Malabar Road could be blocked off. The public hearing was closed.

Motion by Mr. Woodard, seconded by Mr. Zonka, to approve the request with the following conditions: a) the car wash shall adhere to the time constraints of the noise ordinance; b) a concrete wall shall be erected along the east and south boundary line with trees and natural buffers; c) sidewalk construction timing shall be negotiated with staff; and d) frontage signs on Jupiter Boulevard and Malabar Road shall have dark backgrounds; e) the project shall be dark sky compliant; and f) semi-trucks be excluded from utilizing the station (which due to the design it was felt it would be prohibited).

Motion by Deputy Mayor Geier to amend the motion to include a condition that the car wash close at 9:00 P.M. and there be no sale of diesel fuel. Motion died for lack of a second.

Mr. Zonka agreed with the closing time for the car wash, but felt more vehicles were utilizing diesel fuel and the design of the facility was not conducive to semi-trucks.

Motion by Deputy Mayor Geier, seconded by Mrs. Isnardi, to amend the motion to include a condition that the car wash hours be from 7:00 A.M. to 9:00 P.M. The motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to amend the motion to include the conditions: a) the internal driveway would be required; b) any future construction on the south end of the site shall require Council's approval; and c) a traffic study be included for the justification of a right turn lane. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

Original motion, as amended, carried with members voting as follows:

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

**♣13. Resolution No. 2008-37, granting a conditional use for indoor recreation (teen dance center) in CC (Community Commercial District) zoning on property located west of and adjacent to Culver Drive, in the vicinity between Palm Bay Road and Emerson Drive (2.0 acres)(Case No. CU-10-2008, N Motion, LLC).**

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

The Planning and Zoning Board recommended that the request be approved with the following conditions: a) hours of operation shall be from 6:30 P.M. to 11:00 P.M.; b) police officer security would begin at least one half hour before club operating hours and end at least one half hour after closing hours; and c) all City codes and fire regulations shall be met.

The City Attorney read the resolution in caption only. The public hearing was opened. Speakers were sworn in as witnesses by completing written oaths. Rachel Crandall, applicant, presented the request to Council. John Studer, President of the Lockmar Homeowners Association, asked that a condition be included to require police security. A resident spoke in favor of the request. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to adopt Resolution No. 2008-37, with the conditions as recommended by the Planning and Zoning Board, including the condition that a minimum of two (2) police officers be required on site, one inside and one outside the facility, one half hour before opening and one half hour after closing. 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 Lawrence D. Spector for an amendment to the Comprehensive Plan Future Land Use Map to change the designated use of property located east of Babcock Street, in the vicinity between Palm Bay and Sun Lakes Roads from Multiple Family Residential Use to Commercial Use (4.5 acres)(Case No. CP-12-2008) (RESCHEDULED TO P&Z - 05-07-08).**

**15. Request by Lawrence D. Spector to rezone property located east of Babcock Street, in the vicinity between Palm Bay and Sun Lakes Roads from RM-20 (Multiple Family Residential District) to HC (Highway Commercial District)(4.5 acres)(Case No. CPZ-12-2008) (RESCHEDULED TO P&Z - 05-07-08).**

**16. Request by the City of Palm Bay to adopt the City's Evaluation and Appraisal Report (Case No. CP-13-2008)(RESCHEDULED TO P&Z - 05-07-08).**

**17. 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 - 05-07-08).**

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

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

1. Palm Bay Area Chamber of Commerce – Kathleen Bishop, President, and Tom Gaume, Chairman, highlighted various activities and projects; challenged City to a bowling league tournament.

2. Space Coast League of Cities - Mr. Woodard stated the beer keg registration issue was not supported.

3. Tourist Development Council – Mayor Mazziotti mentioned that historical markers were being erected throughout the County.

4. Palm Bay Community Hospital - Mayor Mazziotti commented on the progress of new building.

#### **PROCUREMENTS:**

##### **Award of Bid:**

**\* 1. "Other Agency" contracts utilized for the purchase of operating materials and supplies - City Departments (approximately \$75,000 annually).**

Staff Recommendation: Approve the contracts of other agencies (Brevard County) currently being utilized by the City, which exceed or have the potential to exceed the City's formal bid/proposal threshold amount of \$25,000 per year, for standard day-to-day operating materials and supplies utilized by City departments.

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

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

**\* 1. Bridge repairs, various – RFP No. 25-0-2008 – Public Works Department (CEM Enterprises, Inc.; Unlimited Grundy Construction, Inc. - \$110,646).**

Staff Recommendation: Award the proposal for bridge repairs as follows: CEM Enterprises, Inc., Apopka - Port Malabar - \$18,700; Unlimited Grundy Construction, Inc. - Eldron, Aviation, and Jupiter - \$91,946.

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

**Waive of Bid Process and Award:**

**\* 1. Ammonia system improvements – Utilities Department (Water Treatment and Controls - \$47,281 (sole source)).**

Staff Recommendation: Waive the bid process and approve the purchase and installation of two (2) direct feed ammoniators located at the Troutman Lime Softening Facility to Water Treatment and Controls, Pensacola, as sole source, in the amount of \$47,281.00.

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

**\* 2. Belt filter press – Utilities Department (Ashbrook Simon-Hartley - \$324,218 (sole source)).**

Staff Recommendation: Waive the bid process and award the purchase of the belt filter press equipment for the Troutman Wastewater facility to Ashbrook Simon-Hartley, Houston, Texas, as sole source, in the amount of \$324,218.00.

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

**Contracts:**

**\* 1. Continuing consultant engineering agreement, renewal – Public Works Department (PBS&J - \$200,000).**

Staff Recommendation: Approve the annual renewal of the existing Continuing Engineering Consultant Services agreement with PBS&J (originally awarded May 6, 2004), in an estimated annual amount of \$200,000.

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

**\* 2. Acquisition of property for additional right-of-way for Culver Drive – Lots 1-4, Block 2091, First Replat in Port Malabar Unit 21 (\$35,000).**

Staff Recommendation: Authorize the City Manager to execute the closing documents.

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

**UNFINISHED AND OLD BUSINESS:**

**1. Consideration of Emeritus Employment Agreement – City Attorney, Nick Tsamoutales.**

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, to approve the agreement as drafted by David Kornreich, special counsel. Mr. Zonka highlighted various provisions of the contract. Mr. Tsamoutales said he added provisions that he thought had been agreed to by Council and reviewed same.

Council concurred that the items Mr. Tsamoutales added would be discussed and considered individually.

Motion by Deputy Mayor Geier, seconded by Mrs. Isnardi, to amend the motion to include that the City Attorney would not be required to attend the board meetings of the Bayfront Community Redevelopment Agency and the Municipal Charter School Authority (Section 2). The two boards had their own attorneys. Motion carried with members voting as follows:

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

Motion by Deputy Mayor Geier to amend the motion to include an automobile allowance. It was discussed that the mileage to conferences, etc. was reimbursed. Motion died for lack of a second.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to amend the motion to revise Section 5, first sentence, to insert the words “medical and dental” between the words “health” and “benefits”. Motion carried with members voting as follows:

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

Revisions to Section 8 made by the City Attorney were discussed.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to add in the second sentence of Section 8, the words “claims-made” after “Such insurance shall provide”. Motion carried with members voting as follows:

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

Council concurred that the fourth sentence would remain as written: “This insurance coverage shall survive the termination of this Agreement for the maximum period of five (5) years.” Mr. Tsamoutales said he had added two sentences to the end of Section 8 which reiterated a protection that all City employees had by law.

Motion by Mrs. Isnardi, seconded by Deputy Mayor Geier, to amend the motion to include at the end of Section 8, the following language: “The City shall defend, hold harmless and indemnify Tsamoutales to the extent provided to all other employees and as provided in Section 34.13, Palm Bay Code of Ordinances, and Sections 111.07 and 111.071, Florida Statutes. This provision shall also survive the termination of this agreement, any other separation of Tsamoutales’ employment and until the statute of limitations fully runs on any claims made against Tsamoutales, if any.” Motion carried with members voting as follows:

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

Council concurred that the additional language proposed to Section 9 by Mr. Tsamoutales was redundant with the existing language and would not be included.

Mr. Tsamoutales explained the proposed language to Section 10 in regards to his availability to meet with specific individuals.

Motion by Mrs. Isnardi, seconded by Deputy Mayor Geier, to amend the motion to revise the second sentence of Section 10 to read: “Further, upon reasonable notice under the circumstances, Tsamoutales shall be available to meet with the City Attorney and members of the City Council on any matter they choose in connection with matters related to the performance of his city duties.” Motion carried with members voting as follows:

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

Mr. Tsamoutales stated that in Sections 12 and 13, he had added the words at the end of the sentences, “that he has not previously transferred”.

Mr. Tsamoutales stated he proposed the deletion of Subsection F and additional language to Subsection B in Section 14 and explained his reasons for same.

Motion by Mrs. Isnardi, seconded by Deputy Mayor Geier, to amend the motion to change Subsection B, to read: “Conviction of a felony or misdemeanor, involving an offense of moral turpitude whether or not adjudication is withheld”; and that Subsection F remain as written. Motion carried with members voting as follows:

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

Mr. Tsamoutales read the additional language being proposed in Section 16 and stated it was for clarification purposes. Council concurred that the section was to remain as written, except that the language proposed in Subsection C would be included.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to amend the motion to include in Section 16, Subsection C, after the words “and medical bills”, the words “and dental bills”. Motion carried with members voting as follows:

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

Mr. Tsamoutales stated he had added the word “ordinances” to Section 18. Council concurred that ordinances could not be superseded and concurred that the language would remain as written without the addition.

Mr. Tsamoutales explained the purpose of the additional language proposed in Section 19. Mr. Zonka stated the severability clause was in every ordinance enacted by Council and did not understand the reason to vary from it in the agreement. Council felt the proposed language was redundant to the existing language and the section would remain as written.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, to extend the meeting until its conclusion. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

Council concurred that the effective date of the agreement would be June 1, 2008.

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, to amend the motion to add in Section 4, at the end of the second sentence, the words “prorated for partial fiscal years”. Motion carried with members voting as follows:

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

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, that the agreement would terminate on September 30, 2011. Motion carried with members voting as follows:

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

Mr. Woodard said he did not support the agreement, explaining his reasons were related to costs. He stated there was no documentation that the City saved any money by not going to outside counsel. Mayor Mazziotti felt there was a savings of \$80,000 to \$100,000 and elaborated on same. Mrs. Isnardi thanked Mr. Tsamoutales for his services. Deputy Mayor Geier felt there was a cost savings.

Original motion, as amended, 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:**

Council Business was considered later in the meeting after Public Comments.

**NEW BUSINESS: (Ordinances were for first readings.)**

**\* 1. Resolution No. 2008-38, extending the commencement period for a conditional use granted for a planned residential development in RM-20 (Multiple Family Residential District) and HC (Highway Commercial District) zoning on property located at the southeast corner of the Babcock Street and Sun Lakes Road (Case No. CU-45-2006, Silver Sands Senior Housing Limited Partnership).**

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

**2. Resolution No. 2008-39, establishing rates and charges for utilities services and related purposes.**

The City Attorney read the resolution in caption only.

Motion by Deputy Mayor Geier, seconded by Mr. Zonka, to adopt Resolution No. 2008-39. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilman Zonka, Yea; Councilwoman Isnardi, Yea.

**\* 3. Resolution No. 2008-40, authorizing entering into an agreement with the Florida Department of Transportation for utility design work for the utility relocation at the intersection of Babcock Street and Malabar Road.**

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

**\* 4. Resolution No. 2008-41, authorizing entering into an agreement with the Florida Department of Transportation for utility work by highway contractor for the utility relocation at the intersection of Babcock Street and Malabar Road.**

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

**\* 5. Resolution No. 2008-42, adjusting fees associated with the City's Parks and Recreation Department's Summer Day Camp.**

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

**\* 6. Resolution No. 2008-43, adopting the Local Housing Assistance Plan for Fiscal Years 2008-2009 through 2010-2011, as required by the State Housing Initiatives Partnership Program.**

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

**\* 7. Resolution No. 2008-44, authorizing the submission of an application to the Florida Department of Agriculture and Consumer Services for funds for trees at Goode Park.**

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

**\* 8. Resolution No. 2008-45, authorizing the submission of an application to the Florida Department of Agriculture and Consumer Services for funds for trees at Riviera Park.**

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

**\* 9. Resolution No. 2008-46, authorizing the submission of an application to the Florida Department of Agriculture and Consumer Services for funds for trees and vegetation at certain utility lift station sites.**

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

**10. Ordinance No. 2008-36, amending locational requirements for adult entertainment establishments and sexually-oriented businesses.**

The item was removed from the agenda.

**\*11. Ordinance No. 2008-37, establishing regulations for non-storm water discharges and methods for controlling the introduction of pollutants into the City's separate storm sewer system.**

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

**12. Ordinance No. 2008-38, providing for the impoundment of vehicles involved in specified offenses.**

Mr. Woodard stated he had some major concerns about the ordinance -- possible abuse, too many steps in the process, administrative fee was excessive. He would support a fee in the amount of \$100. He asked for a report at the end of the year as to how many vehicles were impounded and returned. Mrs. Isnardi also disagreed with the proposed administrative fee amount and also felt there was too much discretion being authorized.

She did not feel vehicles should be impounded due to the noise issue. Deputy Mayor Geier felt the fee was too high and that a vehicle should not be impounded due to noise.

The City Attorney read the ordinance in caption only.

Motion by Mr. Zonka, seconded by Deputy Mayor Geier, to adopt Ordinance No. 2008-38, with a reduction in the administrative fee to \$100. Motion carried with members voting as follows:

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

**\*13. Ordinance No. 2008-39, amending the Code of Ordinances, Chapter 52, Boards, by expanding the composition, duties, and responsibilities of the Community Development Advisory Board.**

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

**\*14. Ordinance No. 2008-40, providing for naming a private drive located within the Malabar Cove development as 'Daffodil Drive'.**

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

**\*15. Consideration of extending the time frame for submission of a final Planned Unit Development application (Case No. PUD-5-2007, Chaparral Properties).**

Staff Recommendation: Approval of the request to extend the time frame.

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

**\*16. Consideration of an amendment to the Declaration of Restrictions with Town Center Partners, LTD. relating to the Majors Golf Course.**

Staff Recommendation: Authorize the City Manager to execute Exhibit B to the amendment to Declarations and Restrictions which amended the legal description of the golf course to reflect the golf course as it existed to date.

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

**\*17. Consideration of entering into a license agreement with BRP US, Inc. for the use of certain road rights-of-way for the purpose of testing of all-terrain vehicles.**

Staff Recommendation: Authorize a license agreement with BRP US, Inc. for the period of May 1, 2008, through April 30, 2011, for the use of specific rights-of-way in PM Unit 53 for the purpose of testing all terrain vehicles.

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

**\*18. Consideration and acknowledgement of the City's review of the Port Malabar Holiday Park, Mobile Home Park Recreation District's revenue note.**

Staff Recommendation: Acknowledge review by the City Council of the Port Malabar Holiday Park, Mobile Home Park Recreation District's Revenue Note in accordance with Ordinance No. 83-52, Section 3.

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

**\*19. Consideration of submitting a grant application to the Florida Forever Program (Florida Communities Trust) for funds to acquire property for various projects.**

Staff Recommendation: Authorize the grant submission.

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

**\*20. Consideration of donating abandoned and lost property retrieved by the Police Department to the Palm Bay Police Athletic League.**

Staff Recommendation: Authorize the City Manager to donate abandoned and lost property in the possession of the Police Department to the Palm Bay Police Athletic League in accordance with Section 705.130, Florida Statutes.

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

**\*21. Consideration of the acquisition of property by the Bayfront Community Redevelopment Agency (BCRA); release of City liens; payment of taxes (2263 Randolph Street, NE).**

Staff Recommendation: Approve the BCRA's acquisition of the property located at 2263 Randolph Street, NE.

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

**\*22. Consideration of entering into an agreement with the School Board of Brevard County for school resource officers at Southwest Middle School, Bayside and Palm Bay High Schools.**

Staff Recommendation: Authorize the City Manager to execute the agreement only for Fiscal Year 2008-2009 in the flat rate amount of \$85,500.

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

**\*23. Consideration of submitting a priority list to the Metropolitan Planning Organization (MPO) to secure state and federal transportation funds.**

Staff Recommendation: Authorize the submittal of the Request for State and Federal Transportation Project Funding to the MPO.

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

**ADMINISTRATIVE AND LEGAL REPORTS:**

There were no reports.

**PUBLIC COMMENTS/RESPONSES:**

There were no public comments.

**☞ COUNCIL BUSINESS:**

**MR. WOODARD:**

1. Announced Support the Troops Rally - Saturday, May 10<sup>th</sup>, Veterans Park, from 3:00-5:00 P.M.
2. Would have City Clerk send out previous information provided on Patriot Charter School since it would be discussed at the next meeting.

**DEPUTY MAYOR GEIER:**

1. Asked Mr. Feldman to place information on \$40 converter box on City's website.

**MR. ZONKA:**

1. Asked for report on the resolution to the noise problem at the gun range; suggested that some type of notification be established to inform potential property buyers of gun range being in the area.

**MRS. ISNARDI:**

1. Thanked Doc Cooper for donating the POW-MIA flags.  
2. Thanked board members and V-cops; felt V-cops should be given more responsibilities, if possible.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at the hour of 11:41 P.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.