

**ORMOND BEACH CITY COMMISSION MEETING  
HELD AT CITY HALL COMMISSION CHAMBERS**

**August 2, 2005      7:00 p.m.**

Present were: Mayor Fred Costello, Commissioners Jeff Boyle, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Deputy City Attorney Sandy Upchurch, and City Clerk Veronica Patterson.

**A G E N D A**

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend Peter Hauser, Ormond Beach Presbyterian Church.
- 3) Pledge of Allegiance.
- 4) Approval of the Minutes of the July 12, 2005, and the July 19, 2005, meetings.
- 5) **PRESENTATIONS:**
  - A) Proclamation by Mayor Costello proclaiming the month of August as Firefighter Appreciation Month for their efforts on behalf of Muscular Dystrophy in the City of Ormond Beach.
  - B) Presentation by the Ormond Beach Golden Spikes 12 and under baseball team.
- 6) **AUDIENCE REMARKS:**
- 7) **INTERGOVERNMENTAL BOARD REPORTS:**
  - A) Metropolitan Planning Organization
  - B) Volusia Council of Governments
  - C) Smart Growth Implementation Committee
  - D) Water Authority of Volusia
- 8) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
  - A) Resolution No. 2005-147 authorizing the execution of an agreement with Software House International relative to the provision of Microsoft software and an agreement with Microsoft Licensing, GP, for the authorized use of said software; authorizing payment therefor. (\$165,099)

- B) Resolution No. 2005-149 authorizing the execution of a Florida Recreation Development Assistance Program project agreement between the City and the Florida Department of Environmental Protection. (Land acquisition for Central Park improvements; FRDAP Grant - \$112,500; \$37,500 matching funds)
- C) Resolution No. 2005-150 authorizing the execution of a first amendment to the full service cost-per-copy contract between the City and Technicians Unlimited, Inc., d/b/a TUI Business Machines.
- D) Resolution No. 2005-151 accepting the bid of FBG Service Corporation regarding the provision of janitorial services at the Police facilities under Bid No. 2005-27; rejecting all other bids; authorizing the execution of a contract between the City and FBG Service Corporation, and payment thereunder. (\$18,720 annually)
- E) Resolution No. 2005-152 accepting a proposal from McKim & Creed, P.A., to provide engineering services regarding the Pine Tree Drive water main extension project; rejecting all other proposals; authorizing the execution of a work authorization thereto. (Not-to-exceed \$48,020)
- F) Resolution No. 2005-153 accepting a bid from PKC, Inc., d/b/a Wayne's Roofing & Sheet Metal, regarding the Senior Center roof replacement under Bid No. 2005-31; authorizing the execution of a contract and payment therefor; rejecting all other bids. (\$42,765)
- G) Resolution No. 2005-154 terminating a contract with West Florida Maintenance, Inc., regarding painting services at the Water Treatment Plant and Wastewater Treatment Plant; authorizing the execution of a termination letter; authorizing the re-bidding of the project.
- H) Resolution No. 2005-155 authorizing the expenditure of \$748 from the Federal Law Enforcement Trust Fund to supplement a Local Law Enforcement Block Grant.
- I) Resolution No. 2005-156 declaring the intention of the City Commission to consider vacating a portion of Fluhart Avenue right-of-way lying west of Riverside Drive; reserving certain easements; establishing a time certain for a public hearing.
- J) Review of FY 2004-05 budget status.

DISPOSITION: Approve as recommended in City Manager memorandum dated July 28, 2005.

9) **PUBLIC HEARINGS:**

- A) Ordinance No. 2005-14 annexing certain real property into the City of Ormond Beach generally located south of Airport Road and west of Interstate 95; setting forth zoning, privileges, and obligations of said property; providing for transmission. (River Oaks Planned Residential Development - 58.28 acres) (Second Reading)
- B) Ordinance No. 2005-20 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and Zoning District, of Article I, Establishment of Zoning Districts and Official Zoning Map, of the Land Development Code, by amending the Official Zoning Map to rezone a 4.57-acre parcel of real property from B-8 (Commercial) to PBD (Planned Business Development), said real property being located on the south side of West Granada Boulevard (SR40) between "Ormond Towne Square" shopping center and the "Lowe's" home improvement store; establishing boundaries; authorizing revision of the official zoning map; approving a Third Amended and Restated Development Order for "Ormond Town Commercial Center," Phase II, Planned Business Development. (First Reading) (Tabled from July 19, 2005)
- C) Ordinance No. 2005-21 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and Zoning District, of Article I, Establishment of Zoning Districts and Official Zoning Map, of the Land Development Code, by amending the Official Zoning Map to rezone a 35.76-acre parcel of real property from B-8 (Commercial) to PBD (Planned Business Development), known as "Ormond Towne Square," located on the south side of West Granada Boulevard (SR40) east of Williamson Boulevard; establishing boundaries; authorizing revision of official zoning map; approving a Fourth

Amended and Restated Development Order for “Ormond Towne Square” shopping center Planned Business Development. (Beall’s Department Store) (Second Reading)

- D) Ordinance No. 2005-22 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and Zoning District, of Article I, Establishment of Zoning Districts and Official Zoning Map, of the Land Development Code, by amending the Official Zoning Map to rezone a 24.029-acre parcel of real property from B-8 (Commercial) to PBD (Planned Business Development), known as “Wal-Mart SuperCenter,” located at 1521 West Granada Boulevard; establishing boundaries; authorizing revision of the official zoning map; approving a Fourth Amended and Restated Development Order for “Wal-Mart SuperCenter” Planned Business Development. (Second Reading)
- E) Ordinance No. 2005-24 relative to the office of Mayor and City Commissioner, providing for and calling a Primary Election of the registered electors of the City of Ormond Beach to be held, if necessary, on October 11, 2005; further providing for and calling a Regular Election of the registered electors residing in the City of Ormond Beach to be held on November 8, 2005; providing for qualifying and election procedures; establishing a date for taking office; designating the location of polling places. (Second Reading)
- F) Ordinance No. 2005-25 amending Chapter 3, Performance Criteria, Article IV, Sign Regulations, Section 3-45, Temporary Signs, of the *Land Development Code* by amending the time limit for political signs. (Second Reading)

10) **FIRST READING OF ORDINANCES:**

- A) Ordinance No. 2005-26 amending Article III, Dogs and Cats, of Chapter 5, Animals and Fowl, of the *Code of Ordinances* by amending Section 5-81, Action to be Taken by Owners/Keepers of Dangerous Dogs; by repealing Section 5-82, Fee Required for Certificate of Registration; by amending Section 5-84, Violations.
- B) Ordinance No. 2005-27 amending Sections 3.01, 3.02, 3.03, 3.07, 3.08, 5.02, 5.05, 5.06, 5.07, 6.02, and 6.08 of the *Charter* of the City of Ormond Beach, Florida, by providing citywide elections for all members of the City Commission; by providing requirements for qualifying; providing requirements for resignation from office; providing requirements for filling vacancies in office; repealing the requirement for holding an organizational meeting at a certain time; amending references to ballot style; clarifying the time by which to certify election results; amending terms of office to include staggered terms, four-year terms for City Commissioners and two-year terms for Mayor; providing a schedule for staggering the terms of office; providing a procedure for determining the votes; amending the composition of the canvassing board.

11) **RESOLUTION** No. 2005-157 approving and adopting a Parks and Recreation Master Plan.

12) **DISCUSSION ITEMS:**

- A) Temporary canopies.
- B) Update on transportation planning and funding.
- C) Temporary occupancy of single-family homes.
- D) 2006 legislative update.

13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

14) Close the meeting.

Item #1 - Call to Order

Mayor Costello called the meeting to order at 7:00 p.m.

City Commission – August 2, 2005

Item #2 – Invocation

Commissioner Kelley gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #4 – Approval of Minutes

Mayor Costello advised the minutes of the July 12, 2005, and the July 19, 2005, meetings have been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

Mayor Costello asked an amendment be made on page 14895 on the fifth paragraph to read as follows: “Mayor Costello ~~recommended~~ suggested as an example using a 14 stories, including parking stories, aboveground and the transfer of existing development rights with existing density above the 90-foot height limit only in exchange for a parcel that would be used for public parks...” He noted he asked Ms. Patterson to listen to the tape to insure he was recommending amendments to better clarify what he stated at the July 12 meeting.

**Mayor Costello asked if there was any objection to approving the minutes as amended. Hearing none, he declared the minutes approved as amended.**

Item #5(A) – Firefighter Appreciation Month

Firefighter Joe Dupree accepted a proclamation honoring the firefighters for their work in the community in raising funds for the Muscular Dystrophy Association (MDA) fighting neuromuscular diseases. He thanked the City for its assistance.

Mayor Costello stated the City was proud of the firefighters' efforts, not only in keeping the City safe, but for all they do for the MDA as well. He proclaimed August as Ormond Beach Firefighters Appreciation Month.

Item #5(B) – Golden Spikes 12 and Under Baseball Team

Mr. Bob Lecates, representing the Golden Spikes Baseball Team, thanked the City for its donation that assisted the team to travel to Cooperstown, New York, to participate in a camp and tournament for children 12 and under from all over the country. He noted the team finished 48<sup>th</sup> out of 80 teams. Mr. Lecates presented a commemorative bat and a team photograph to the City Commission.

Commissioner Kelley stated this was the sixth consecutive year that the Golden Spikes have attended this camp and tournament. He noted this was a wonderful experience for the children.

Mayor Costello thanked the team for being ambassadors for Ormond Beach.

Commissioner Kent expressed pride in seeing three of his former students on the team.

Item #6 - Audience Remarks

Breakaway Trails Homeowners' Association Issue

Mr. Bob Evanoff, 8 Oak Knoll Way in Breakaway Trails, stated Breakaway Trails was a planned urban development platted for 984 homes, and the development must meet the specifications of the Breakaway Trails Development of Regional Impact (DRI) Development Order. He pointed out that the City was responsible for enforcing the provisions of the DRI.

Mayor Costello advised Mr. Evanoff that he would allow him to continue to speak unless Deputy City Attorney Upchurch informed him that he was discussing an issue on which the City Attorney's office had previously ruled.

Ms. Sandy Upchurch, Deputy City Attorney, noted she understood the City Attorney spoke to Mr. Evanoff regarding this matter, and she, herself, had written a memorandum on this topic. She advised this was a private issue that needed to be resolved within the homeowners' association rather than by the City Commission.

Mayor Costello stated that should Mr. Evanoff wish to speak on a separate matter, he may speak; however, he may not discuss an issue on which the City Attorney had already ruled.

Mr. Evanoff requested Mayor Costello recuse himself and turn the gavel over to the Deputy Mayor.

Mayor Costello stated he did not believe that was necessary, but to avoid any hint of impropriety, he acceded to Mr. Evanoff's request.

Deputy Mayor Boyle stated he understood Mr. Evanoff questioned whether the DRI had been properly amended by the homeowners' association, and the City Attorney's decision was that the City could not make that determination.

Ms. Upchurch reported Mr. Evanoff also had issues as to whether the homeowners' association required the proper percentage at a vote within the homeowners' association meetings, but the City or the Commission could not make that call. She noted while she hoped Mr. Evanoff could resolve the issue amicably, ultimately, should he not receive the relief he was seeking from the homeowners' association, a court would be the appropriate approach to pursue.

Commissioner Boyle stated the City could not hear this issue in that the City Attorney had made a ruling.

Mr. Evanoff stated he never received an official notice from the City Attorney and spoke only casually in a grocery store to Mr. Hayes; therefore, he did not consider that conversation to be an official opinion.

Deputy Mayor Boyle noted Mr. Hayes provided his opinion on the public record. He asked if a written response could be provided to Mr. Evanoff.

Ms. Upchurch stated Mr. Hayes had spoken from the dais on the subject, and she had drafted a letter to Mr. Evanoff on this issue within the past year or two; whereby, Mr. Evanoff stated the letter referred to a separate matter.

Commissioner Boyle clarified that the City Commission could not become involved in homeowners' association issues, but asked Ms. Upchurch to send another letter to Mr. Evanoff. He returned the gavel to Mayor Costello.

#### Aviation Advisory Board

Mr. Charles Carter, 212 Arlington Way, stated that as an Aviation Advisory Board member he invited the Commission to attend the Aviation Advisory Board meetings. He reported the Friday letter referenced the last Aviation Advisory Board meeting on July 29 relative to two items of concern, which were the status of the board under Code 2-290 and the future status of the operations of the airport. Mr. Carter noted no vote was taken on either of these items. He stated the board voted four to zero that funding for repairs to the golf course should not come from airport improvement funds.

Mayor Costello commended the secretary for preparing the Aviation Advisory Board minutes so quickly.

#### Commissioner Boyle's School Board Personnel Records

Mr. Gregory Avakian, 161 Heritage Circle, stated Commissioner Boyle brought an envelope into the Commission Chambers relative to his school board personnel records. He stated this was important to the City because it would define the City by its actions or inactions. Mr. Avakian noted he would not be able to bring this issue to the Commission sufficiently in five minutes and asked to speak at the end of the meeting; whereby, Mayor Costello reported he would be able to finish his comments at the end of the meeting as long as he did not make personal statements.

#### Budget Advisory Board Nominee

Mr. Glenn Wren, 27 South St. Andrews Drive, complained about the Commission's treatment of a nominee for the Budget Advisory Board. He noted the nominee was very active in government, and the residents needed and wanted active citizens. Mr. Wren reported the City Attorney advised that the majority of the Commission broke with procedure and may have violated the procedures and processes of the City.

#### Gopher Tortoises

Mr. Wren stated the newspaper indicated the City management was misjudged relative to its treatment of gopher tortoises in that it followed proper protocol. He questioned what occurred at the airport may have been done on purpose and considered to be within the bounds of risk management.

Political Politics

Mr. Julian Lopez, Jr., 2250 Baja Trail, noted he was appalled by the politics occurring in Ormond Beach especially the resurgence of Commissioner Boyle's personnel records. He urged the politicians to remain on the issues such as height limits, recreational infrastructure, City building maintenance, and beach access.

Item #7(A) and (B) – Metropolitan Planning Organization and Volusia Council of Governments

Mayor Costello reported there were no July meetings of the Metropolitan Planning Organization (MPO) and the Volusia Council of Governments (VCOG).

Item #7(C) – Smart Growth Implementation Committee

Mayor Costello reported the Smart Growth Implementation Committee was scheduled for Monday, and he was hopeful it would be the final meeting. He noted presentations would be made before the Volusia County Council and the Charter Review Committee. Mayor Costello stated there were minor edits that he would forward to the Commission.

Item #7(D) Water Authority of Volusia

Commissioner Boyle stated the Water Authority of Volusia (WAV) meeting was held July 20. He reported the WAV board discussed the Daytona Beach unitary rate issue and determined that this portion of the interlocal agreement should be reconsidered, but not until after the adoption of mid-term funding, the master facilities plan, and the projects.

Item #8 - Consent Agenda

Mayor Costello advised that the action proposed for each item on the Consent Agenda was so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any one or more of the items separately.

Mayor Costello reported staff has asked that Item No. 8(B) be removed and tabled to the next meeting.

**Commissioner Boyle moved, seconded by Commissioner Kent, for approval of the Consent Agenda, minus Item No. 8(B), which would be tabled to the next meeting.**

Call Vote:	Commissioner Boyle	yes
	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

Item #9(A) – River Oaks Planned Residential Development Annexation

ORDINANCE NO. 2005-14  
AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY INTO  
THE CITY OF ORMOND BEACH GENERALLY LOCATED  
SOUTH OF AIRPORT ROAD AND EAST OF INTERSTATE 95;  
SETTING FORTH ZONING, PRIVILEGES, AND OBLIGATIONS  
OF SAID PROPERTY; PROVIDING FOR TRANSMISSION; AND  
SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2005-14, on second reading, as read by title only.**

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(A).**

Item #9(B) - Ormond Town Commercial Center, Phase II

ORDINANCE NO. 2005-20

AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND ZONING DISTRICT, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF THE LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE A 4.57-ACRE PARCEL OF REAL PROPERTY FROM B-8 (COMMERCIAL) TO PBD (PLANNED BUSINESS DEVELOPMENT), SAID REAL PROPERTY BEING LOCATED ON THE SOUTH SIDE OF WEST GRANADA BOULEVARD (SR40) BETWEEN “ORMOND TOWNE SQUARE” SHOPPING CENTER AND THE “LOWE’S” HOME IMPROVEMENT STORE; ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A THIRD AMENDED AND RESTATED DEVELOPMENT ORDER FOR “ORMOND TOWN COMMERCIAL CENTER,” PHASE II, PLANNED BUSINESS DEVELOPMENT; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2005-20, on first reading, as read by title only.**

Mr. Clay Ervin, Planning Director, explained the applicant was requesting a waiver from the 30-foot height limitation of two proposed towers. He reported staff recommended approval, but the Planning Board did not recommend approval.

Mayor Costello received a consensus to allow the 45-foot height limit as recommended by staff.

Mr. Ervin noted the next issue pertained to the number of permitted wall signs and the height.

Mayor Costello received a consensus to approve the staff recommendation.

Mr. Ervin reported the only other issue was the use of an apartment for an on-site manager. He noted the other issues had been resolved.

**Mayor Costello asked that the motion reflect the 45-foot height limit and the 25-foot sign after receiving affirmation that this was the intent by the Commissioners who moved and seconded the motion.**

Call Vote:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
	Commissioner Kent	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(B).**

Item #9(C) - Beall's Department Store

ORDINANCE NO. 2005-21

AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND ZONING DISTRICT, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF THE LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE A 35.76-ACRE PARCEL OF REAL PROPERTY FROM B-8 (COMMERCIAL) TO PBD (PLANNED BUSINESS DEVELOPMENT), KNOWN AS “ORMOND TOWNE SQUARE,” LOCATED ON THE SOUTH SIDE OF WEST GRANADA BOULEVARD (SR40) EAST OF WILLIAMSON BOULEVARD; ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF OFFICIAL ZONING MAP; APPROVING A FOURTH AMENDED AND RESTATED DEVELOPMENT ORDER FOR “ORMOND TOWNE SQUARE” SHOPPING CENTER PLANNED BUSINESS DEVELOPMENT; REPEALING ALL

INCONSISTENT ORDINANCES OR PARTS THEREOF; AND  
SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2005-21, on second reading, as read by title only.**

Call Vote:	Commissioner Partington	yes
	Commissioner Boyle	yes
	Commissioner Kent	yes
	Commissioner Kelley	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(C).**

Item #9(D) - "Wal-Mart SuperCenter" Planned Business Development

ORDINANCE NO. 2005-22

AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND ZONING DISTRICT, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF THE LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE A 24.029-ACRE PARCEL OF REAL PROPERTY FROM B-8 (COMMERCIAL) TO PBD (PLANNED BUSINESS DEVELOPMENT), KNOWN AS "WAL-MART SUPERCENTER," LOCATED AT 1521 WEST GRANADA BOULEVARD; ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A FOURTH AMENDED AND RESTATED DEVELOPMENT ORDER FOR THE "WAL-MART SUPERCENTER" PLANNED BUSINESS DEVELOPMENT; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2005-22, on second reading, as read by title only.**

Mr. Ervin stated Mr. Shane Guine of Duplantis, acting as a consultant for Wal-Mart, contacted the City and indicated they wished to work with the City to determine what could be done and what mitigation would be required. He noted Wal-Mart would prefer not to be required to construct a building for storage and would prefer to use a wrought iron fence and screen instead along with providing improvements to the landscaping, walls, and exterior finish. Mr. Ervin advised he had requested Wal-Mart to outline their perimeters so the City could identify specific improvements, but he had received no response to this inquiry. He reported in a phone call today, Mr. Guine indicated Wal-Mart was not prepared to come forward with a final figure as to what they would be willing to spend on improvements for mitigation.

Ms. Rita Press, 875 Wilmette Avenue, stated she considered it to be important when an applicant asked for concessions that the Commission ask for concessions in return. She reported the Planning Board asked Wal-Mart to improve the landscaping, the sign, and the exterior of the building.

Mr. Shane Guine, Duplantis Design Group, 314 East Bayou Road, Thibodaux, Louisiana, stated Wal-Mart wanted to amend the approved ordinance using the black wrought iron fence and black screening, but they would make the landscaping improvements. He reported the staff offered no recommendation relative to the ordinance change for outside sales.

Mayor Costello reported he had the opportunity to discuss this issue with Mr. Guine where he related to him that until Ormond Beach's Wal-Mart becomes one of the finest Wal-Marts in Florida, he was not interested in allowing any changes. He pointed out that Wal-Mart came to Ormond Beach early, and it was time Ormond Beach's Wal-Mart was improved to make it an asset to the community. Mayor Costello stated while traveling to Ocala, he noticed two-by-two or three-by-three masonry columns extending twenty feet matching the outside of the building with the wrought iron and black mesh between them providing a more aesthetically pleasing effect than what the applicant was proposing.

Mr. Guine stated that while the building was plain, it looked good and there was plenty of landscaping on the site. He noted Wal-Mart came to the City two years ago for temporary



storage and the City denied their request. Mr. Guine reported Wal-Mart then provided permanent storage to fit the existing building, making an effort to provide what they needed and what the City needed. He requested the City specify exactly what it wanted Wal-Mart to provide.

Mayor Costello noted while he did not have pictures of Wal-Mart stores in other areas, Mr. Guine had access to those pictures, and what he wanted was that the Ormond Beach Wal-Mart be comparable to the nicest of those.

Commissioner Partington stated he was ready to approve what had been previously approved but not the mesh fencing. He noted he considered Wal-Mart to be an asset to the community, although they may not be an asset aesthetically.

Commissioner Boyle noted he understood the passion behind the Planning Board's recommendations, but he questioned what Number 1 regarding liquidated damage fines, and Number 2 regarding the fenced area being enclosed as a building area would accomplish. He stated issues could be dealt with on a case-by-case basis as had been done in the past; however, he urged the third recommendation relative to landscaping be accepted. Commissioner Boyle stated Mr. Guine indicated willingness for Wal-Mart to accept this. He noted what was before the Commission was fair and reasonable.

Commissioner Kelley indicated he did not believe the City could change the appearance of the structure, but enhancements could be made through landscaping. He noted Wal-Mart was of value to the community. Commissioner Kelley urged Mr. Guine to bring back visuals in the form of enhanced landscaping that Wal-Mart would be willing to provide. He stated this may need to be tabled to the next meeting to provide Mr. Guine an opportunity to discuss this with Wal-Mart; but in lieu of that, he would support the ordinance as presented.

Mayor Costello reported he heard support for what was already passed, but he would be willing to consider more flexibility for outside storage in return for other investments in the building and the extension of the masonry wall in order to eliminate the chain link fence between Wal-Mart and SR40.

Mr. Guine stated Wal-Mart would follow whatever the Commission passed. He noted the City's landscape architect would be asked to work with Wal-Mart's landscape architect.

Commissioner Kelley stated Wal-Mart had been a good neighbor, making contributions to various charities supporting the community. He stated the City could not ask Wal-Mart to paint the building or change the block at this point.

Mayor Costello stated the only time the City could make these types of requests was when Wal-Mart was seeking to make a change as they were now. He noted the City could ask anything, but it would be up to Wal-Mart to decide if it would be worth fulfilling that request. Mayor Costello concurred that Wal-Mart has been an asset to the community.

Ms. Upchurch advised that if substantive changes were to be made, a new first and second reading of the ordinance would be required.

Mayor Costello noted that Mr. Guine had indicated Wal-Mart was ready to accept the requirements in this ordinance. He reported this would include the upgraded landscaping, but it would not include extending the wall and eliminating the chain-link fence along SR40. Mayor Costello reported he would entertain a motion to amend the ordinance to include this; however, no such amendment was made.

Call Vote:	Commissioner Boyle	yes
	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(D).**

Item #9(E) – Calling a Primary Election

ORDINANCE NO. 2005-24  
AN ORDINANCE RELATIVE TO THE OFFICE OF MAYOR AND  
CITY COMMISSIONER, PROVIDING FOR AND CALLING A  
PRIMARY ELECTION OF THE REGISTERED ELECTORS OF

THE CITY OF ORMOND BEACH TO BE HELD, IF NECESSARY, ON OCTOBER 11, 2005; FURTHER PROVIDING FOR AND CALLING A REGULAR ELECTION OF THE REGISTERED ELECTORS RESIDING IN THE CITY OF ORMOND BEACH TO BE HELD ON NOVEMBER 8, 2005; PROVIDING FOR QUALIFYING AND ELECTION PROCEDURES; ESTABLISHING A DATE FOR TAKING OFFICE; DESIGNATING THE LOCATION OF POLLING PLACES; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2005-24, on second reading, as read by title only.**

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(E).**

Item #9(F) - Amending the Time Limit for Political Signs

ORDINANCE NO. 2005-25  
AN ORDINANCE AMENDING CHAPTER 3, PERFORMANCE CRITERIA, ARTICLE IV, SIGN REGULATIONS, SECTION 3-45, TEMPORARY SIGNS, OF THE *LAND DEVELOPMENT CODE* BY AMENDING THE TIME LIMIT FOR POLITICAL SIGNS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2005-25, on second reading, as read by title only.**

Mr. Ervin clarified that this ordinance would reinstitute certain aspects as they had been previously; however, the bond would be changed from \$50 to \$150.

Mayor Costello asked when a person would become a candidate.

Ms. Veronica Patterson, City Clerk, stated a person would become an official candidate when they opened a campaign account.

Call Vote:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
	Commissioner Kent	yes
Carried.	Mayor Costello	no

**Hearing no objection, Mayor Costello closed the public hearing on Item #9(F).**

Item #10(A) - Dangerous Dogs

ORDINANCE NO. 2005-26  
AN ORDINANCE AMENDING ARTICLE III, DOGS AND CATS, OF CHAPTER 5, ANIMALS AND FOWL, OF THE *CODE OF ORDINANCES* BY AMENDING SECTION 5-81, ACTION TO BE TAKEN BY OWNERS/KEEPERS OF DANGEROUS DOGS; BY REPEALING SECTION 5-82, FEE REQUIRED FOR CERTIFICATE OF REGISTRATION; BY AMENDING SECTION 5-84, VIOLATIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kent, to approve Ordinance No. 2005-26, on first reading, as read by title only.**

Ms. Janice Fitzgerald, 34 Charleston Square, thanked Mayor Costello and Commissioner Kent for the consideration they displayed to her over the past few months. She stated many citizens were unaware this law was under review, and little time was provided to solicit citizen input prior to this law passing on March 1, 2005. Ms. Fitzgerald reported Orange County recently passed a dangerous dog law only after public workshops and forums were held to solicit comment from citizens and interest groups; however, the Ormond Beach law was passed with no input from its citizens. She requested the Commission postpone approving any amendments to the law and appoint a citizens committee to review the entire law. Ms. Fitzgerald noted the Orange County law allowed for a classification committee to review the decision of Animal Control to declare a dog dangerous, and Ormond Beach should establish a committee to give an owner the opportunity to have the case heard by an independent group to insure the label applied was justified. She pointed out the Ormond Beach law did not address the qualifications of an animal control officer who could determine if a dog was dangerous. Ms. Fitzgerald stated review by classification would also give a dog owner another review option prior to appealing the decision to a special master. She reported Orange County allowed for two classifications known as potentially dangerous dogs and dangerous dogs. Ms. Fitzgerald stated Ormond Beach law would leave an avenue open for innocent responsible dog owners to become victims unnecessarily.

Ms. Fitzgerald reported the Orange County law deleted the requirement for liability insurance because of legal advice that the County could not require someone to purchase a policy not readily available in the marketplace, while Ormond Beach law required liability insurance. She stated Hollywood, Florida, was repealing their insurance requirements because there was a lack of insurance companies willing to write the insurance policies, and the ordinance was unenforceable creating a burden on its residents. Ms. Fitzgerald stated the Ohio Supreme Court deemed a law requiring such insurance to be unconstitutional. She reported the Ormond Beach ordinance indicated that if insurance could not be obtained, the owner of the dog could purchase a surety bond or pay the City \$1,000 per year in lieu of insurance, and she questioned for what this money would be used. Ms. Fitzgerald noted that any person injured by a dangerous dog already has legal recourse through the courts to recover damages. She requested the Commission suspend the enforcement of the liability insurance requirement pending final review by the citizens committee. Ms. Fitzgerald offered to volunteer her services on this volunteer committee and urged the Commission to appoint Janet Narushka, an AKC judge and dog obedience trainer, and Ed Gordon, an animal behaviorist, to the committee as well. She asked those in the audience who supported responsible dog owners to stand and be recognized.

Ms. Janet Narushka, 357 Collins Street, reported Ormond Beach ordinances were not receiving adequate public input. She stated the changes in the limit law and insurance requirements do nothing to address the issue of responsible dog ownership. Ms. Narushka reported after meeting with Police Chief Larry Mathieson and Deputy City Attorney Sandy Upchurch, she believed the citizens have been misinformed as to other cities' requirements. She noted Chief Mathieson was to send her and the Commission a report, but that report was not forthcoming. Ms. Narushka recommended the Commission not vote on this today and authorize the City Manager to appoint a citizens committee consisting of a local veterinarian, animal behaviorists, representatives from the Greater Daytona Dog Fanciers, and representatives from the Obedience Club of Daytona to review the law and propose changes that were fair to all and that would protect responsible dog owners. She offered to serve on the board.

Mr. Anthony Narushka, 357 Collins Street, asked the Commission to authorize the City Manager to appoint a citizens committee to review the entire animal control ordinance.

Mr. Mark Kay, 6 Queen Ann Court, stated he had four rottweiler dogs, and all are deemed dangerous. He stated it cost him \$4,000 because he could not purchase insurance. Mr. Kay reported his veterinarian and Ormond Beach Animal Control have indicated his dogs were not dangerous. He stated he missed his appeal in that he did not know it was being discussed; therefore, he was unable to speak at the hearing. Mr. Kay explained his wife loved these dogs, and he has spent thousands of dollars for these dogs because they were deemed dangerous when they are not dangerous.

Ms. Susan Ward, 26 Pine Trail, stated she was an owner of a dangerous dog. She reported the system was unfair because people have no voice when an Animal Control Officer declares a dog to be dangerous. Ms. Ward noted she presented 17 statements at the Special Master hearing indicating the dog was not dangerous. She reported she had children that play with the dog pulling on the dog's ears, pull the dog's tail, and sit on the dog without the dog ever biting the children. Ms. Ward stated she could not afford the \$1,000 for insurance and could barely afford the \$250 annual registration fee; therefore, she was being forced to explain to her children that their family dog had to be put down because she could not afford the fees.

Commissioner Partington urged the Commission to focus on what was before the Commission tonight, which was corrections to the dangerous dog ordinance to eliminate inconsistencies and redundancies. He stated he continued to support the City's dangerous dog ordinance, and believed it was constitutional in that it mirrored the State statute and other communities' statutes. Commissioner Partington noted this ordinance corrected the liability insurance section so that if liability was obtained and subsequently cancelled, the City was required to be notified of that cancellation, and a non-refundable cash fee of \$1,000 would need to be paid to remain current with the dangerous dog requirements. He pointed out this was a clarification that would protect the City. Commissioner Partington explained this law would keep Ormond Beach current with other cities and avoid what was occurring in Ormond Beach, which was that people were moving into Ormond Beach because it lacked dangerous dog laws. He stated this would protect children. Commissioner Partington noted statutory hearings were required, and procedures were involved in this law.

Commissioner Partington reported this was properly advertised and people could have spoken at the time the ordinance was first passed. He reiterated this ordinance only corrected inconsistencies and redundancies. Commissioner Partington stated he supported the City's strong standards to protect all of the people of Ormond Beach, and he urged the Commission to consider the photographs of children mauled by animals.

Commissioner Kelley stated last week an elderly man in Orlando was nearly killed by a dangerous dog. He noted everyone was responsible for their pets, and this law was to protect all of the people. Commissioner Kelley reported a dangerous dog was defined by the ordinance, and he did not want to have dangerous dogs loose in Ormond Beach or have Ormond Beach become a haven for dangerous dogs because its law was unenforceable or weak.

Commissioner Boyle stated he had a constituent who was gravely injured by a dangerous dog. He noted Ormond Beach had only four dangerous dogs. Commissioner Boyle reported he voted for this ordinance originally because people were not present who opposed the law. He stated he did not believe this was a missed opportunity, but a major shift in how this government decided to handle this issue. Commissioner Boyle pointed out that the Commission was only considering minor changes tonight to what was already approved; however, he has received a number of calls from constituents all over the City who were unaware that this law had been passed. He stated Ormond Beach required pet registration, but pet registration was not enforced. Commissioner Boyle stated the current system had flaws, and he recommended placing an item on a future agenda to consider a moratorium on enforcement and to establish the citizen committee to help the Commission accomplish the objectives to protect the people as well as protect dog owners.

Mr. Isaac Turner, City Manager, stated there were initially six rottweilers on Queen Ann Court last year, and many citizens expressed concern about the dogs. He pointed out that this instance was the genesis of examining whether or not the City's ordinances were adequate. Mr. Turner noted he was aware of at least six dangerous dogs at this time, one of which had bitten at least twice in another community. He cautioned the Commission that while there were people speaking here tonight with one opinion, there were also many other citizens in the community who had grave concerns regarding this issue.

Commissioner Kent stated the dog was one of the most beloved pets in any household. He reported he spoke with Ms. Fitzgerald at length. Commissioner Kent stated dogs are unpredictable, and there was no absolutely guarantee that any dog would never bite. He reported people need to be responsible pet owners, and he concluded that dogs would not be deemed dangerous if they did not do something such as chase or bite people.

Mayor Costello stated he would vote for this ordinance tonight, but he urged the people in attendance to proceed to form a citizen committee that was not an official City Board, would include people concerned about dangerous dogs, and would bring alternatives to the Commission. He noted he supported this ordinance until a better alternative could be provided. Mayor Costello explained he needed to know where this was declared unconstitutional; if the City was using incorrect criteria to deem dogs dangerous; and to produce insurance rejection letters. He did not want a family to have to put down a dog because they could not obtain insurance and did not have the \$1,000. Mayor Costello reported he was uncomfortable with the \$1,000 fee, but he was more uncomfortable with not regulating dangerous dogs. He noted the City may need to consider several layers of dangerous dogs as recommended. Mayor Costello explained he was willing to listen to recommendations of the committee, but only if the other side was represented in these meetings as well.

Deputy Attorney Upchurch stated Ormond Beach's criteria were stricter than what the State law required; however, she assured the Commission that the City's ordinance was constitutional in Florida because the City provided an alternative where if insurance were not available, the dog owner could pay the \$1,000 to the City. Ms. Upchurch advised the City was prohibited by State statute from doing a breed specific statute.

Mayor Costello reiterated he would support this ordinance but was willing to listen to alternative recommendations from a group comprised of both sides of the issue.

Mr. Turner stated that if there were specific suggestions, staff and the Commission should investigate those specific suggestions. He questioned if this group of people would know who to contact for names of proponents of this dog ordinance to serve on the committee. Mr. Turner cautioned that this chambers could easily be packed with people concerned about dangerous dogs.

Call Vote:	Commissioner Boyle	no
	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

Mayor Costello asked Commissioner Boyle what portion he was voting against.

Commissioner Boyle stated he was convinced people could not obtain insurance and preferred a citizen committee bring alternatives.

Ms. Upchurch stated if this committee were to be City sanctioned, it must comply to the provisions of the Sunshine Law.

Mayor Costello noted he did not recommend a City sanctioned committee.

Commissioner Kelley pointed out that the Commission was not against responsible dog owners, but they were trying to protect all of the citizens.

Item #10(B) – Charter Referendum

ORDINANCE NO. 2005-27

AN ORDINANCE AMENDING SECTIONS 3.01, 3.02, 3.03, 3.07, 3.08, 5.02, 5.05, 5.06, 5.07, 6.02, AND 6.08 OF THE *CHARTER* OF THE CITY OF ORMOND BEACH, FLORIDA, BY PROVIDING CITYWIDE ELECTIONS FOR ALL MEMBERS OF THE CITY COMMISSION; BY PROVIDING REQUIREMENTS FOR QUALIFYING; PROVIDING REQUIREMENTS FOR RESIGNATION FROM OFFICE; PROVIDING REQUIREMENTS FOR FILLING VACANCIES IN OFFICE; REPEALING THE REQUIREMENT FOR HOLDING AN ORGANIZATIONAL MEETING AT A CERTAIN TIME; AMENDING REFERENCES TO BALLOT STYLE; CLARIFYING THE TIME BY WHICH TO CERTIFY ELECTION RESULTS; AMENDING TERMS OF OFFICE TO INCLUDE STAGGERED TERMS, FOUR-YEAR TERMS FOR CITY COMMISSIONERS AND TWO-YEAR TERMS FOR MAYOR; PROVIDING A SCHEDULE FOR STAGGERING THE TERMS OF OFFICE; PROVIDING A PROCEDURE FOR DETERMINING THE VOTES; AMENDING THE COMPOSITION OF THE CANVASSING BOARD; PROVIDING SEVERABILITY; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2005-27, on first reading, as read by title only.**

Ms. Pat Behnke, 15 Malayan Sun Bear Path, stated this ordinance contained a great deal, and some portions she would support while others she did not. She asked if this would be voted on as a single entity.

Mayor Costello stated it would receive a single vote unless an amendment was made to separate the ordinance.

Ms. Behnke expressed opposition to the four-year term portion of the ordinance. She stated a good Commissioner would be elected and run for a number of terms, but four years was a long time for a bad Commissioner.

Mr. Gregory Avakian, 161 Heritage, urged a failsafe on disclosure in qualifying for candidacy.

Ms. Laura Jones, 59 Amsden Road, questioned how many times the voters must reject City-wide elections and four-year terms. She stated she opposed each candidate being forced to run in a City-wide election and expressed strong opposition to four-year terms. She noted if Commissioners had done the right things for their constituents, they would be elected for another term; but if they have not fulfilled the promise of the office, they would not be reelected and should not serve a four-year term.

Mr. Glenn Jaspers, 160 Ocean Terrace, stated the people voted for two-year terms. He questioned who had recommended all the changes and expressed opposition to City-wide elections. He questioned if this ordinance would change the bi-monthly meetings of the City Commission.

Mayor Costello responded that the Charter stipulated that the City Commission organizational meeting had to begin at 8:00 p.m. on a certain date. He explained these items would be individually on the ballot for the community to vote on, but they are on a single ordinance tonight for the Commission to approve placing them on the ballot.

Mr. Glenn Wren, 27 South St. Andrews, asked how many items would be on the ballot.

Mayor Costello reported there would be nine ballot questions.

Mr. Wren stated expressed opposition to the Charter amendments. He noted such a large ballot would be confusing to the voters, and his perception was that this was trying to confuse the citizens and give them something they did not want. Mr. Wren stated having City-wide elections would increase the cost of running a campaign, making less good people run, and special interests would control those who would run. He noted the same would apply to four-year terms. Mr. Wren stated the citizens do not want this, but they do want to decide the issue of height limits.

Ms. Adrian Miles, 6 Tidewater Drive, noted she opposed four-year terms and City-wide elections. She stated the citizens were not asking for these changes, but they do want to have a say on height restrictions.

Ms. Rita Press opposed the four-year terms because it may discourage good people from running for office, as the expense of running a City-wide campaign would discourage people not as established in the community as others. Ms. Press stated if the Commissioner were doing a good job, they would be re-elected. She noted this was not a good idea in that there had been no outcry in the community for this change. Ms. Press urged the Commission to reconsider this issue.

Commissioner Boyle noted he would accept the minor amendments on the first page of the City Manager memorandum under Item No.1 and the canvassing board change on Item No. 3, but he opposed Item Nos. 2, 4, and 5. He recommended first discussing if a majority of the Commission wished to delete certain items, and suggested the language be examined if all nine questions were to remain. Commissioner Boyle expressed opposition to moving the election to October and reserving the traditional November date only for run-offs, if necessary. He reported a significant portion of the community spent summers out of Florida and returned in late October, leaving them disenfranchised by this change. Commissioner Boyle noted he opposed the four-year terms and explained that when he was first elected, there were staggered four-year terms. He reported that of the five people elected to four-year terms, only three Commission members completed those terms. Commissioner Boyle noted three Commission members could not remain on the Commission for health reasons, and two could not complete their term. He reported the original ballot language confused the voters, and when terms were questioned on the ballot in 1999, 57% rejected the four-year terms. Commissioner Boyle noted speakers have explained why City-wide elections were not a good idea. He added that this would also place the Commissioner more distant from the people. Commissioner Boyle pointed out these proposed Charter amendments did not originate from the citizens, which left the public perception that they would favor incumbents. He asked if these items were approved, that the ballot language be examined.

Commissioner Kelley stated there would be an election in October if there were candidates to run which would not be any different than what was occurring now for those voters who travel

out of State for the summer. He reported should the people not be in Ormond Beach on Election Day, they could always submit an absentee ballot; therefore, he supported the October election.

Mayor Costello advised he wholeheartedly supported the October election because it would diminish the confusion. He noted Commissioner Boyle was the only Commission member opposed to the October election, so it would stand and be placed on the ballot.

Commissioner Kelley noted many other communities had four-year staggered terms. He pointed out that the cost for running the campaign would be less if the candidate only needed to run for election every four years. Commissioner Kelley stated with City-wide elections, the people would have a greater voice with each Commission seat. He noted Ormond Beach should be past the zone mentality and should be making decisions for the benefit of the entire City. Commissioner Kelley pointed out that if everyone could vote for everyone on the ballot, there would be no confusion as to who could vote or when. He stated he did not believe the expense to run City-wide would discourage candidates from running.

Commissioner Kent stated he was not originally in favor of City-wide elections, but he was more comfortable with allowing the people to speak on this issue. He also urged that the height limits issue be placed on the ballot as well.

Mayor Costello stated City-wide elections would have less special interest because they would have the entire community supporting them, and the four-year terms would have less union influence. He reported this would be a great benefit to the community, and it would be their choice once on the ballot. Mayor Costello noted the majority supported the issues of City-wide elections and four-year terms be included on the ballot. He requested discussion to focus on the ballot language.

Commissioner Boyle stated Question No. 1 regarding City-wide elections would be eliminating what currently existed and proposing something in its place; therefore, he recommended the language read as follows: "The proposed amendment would eliminate the requirement that four zone Commissioners be elected only by residents from their respective zones and provide that the five member City Commission, consisting of a mayor and four zone Commissioners, shall be elected by all voters of the City."

Mayor Costello urged a stipulation be included that all zone Commissioners must live in their specific zone.

Ms. Veronica Patterson, City Clerk, reported that stipulation was included in another section.

Mayor Costello stated he would prefer that stipulation be included in the actual question to avoid confusion. He recommended adding a section at the end of the question to read: "...while keeping the requirement that they have permanent residence in their respective zone." Mayor Costello noted he preferred the question as recommended by staff to Commissioner Boyle's amendment.

Commissioner Boyle pointed out that since the City would be eliminating one policy and substituting something new, what was being eliminated needed to be in the beginning of the question, and what was being substituted would be the second part of the question.

Commissioner Partington reported he objected to this process. He noted he considered it highly objectionable to try to change the ballot language without an opportunity to study the proposal prior to a meeting. Commissioner Partington urged either approving what the Commission had time to review or not approving it since the Commission did not have the opportunity to review or contemplate any consequences of any changes being proposed tonight.

Commissioner Boyle pointed out that any time the Commission put out a referendum on any issue, staff has always prepared a draft of the question language, and the Commission had the opportunity to make changes by majority vote.

Mayor Costello asked if there would be enough time if this were postponed to August 16 to allow the Commission members to make changes and have time to study those proposed changes.

Mayor Costello summarized that unless the Commission overruled him, it would be acceptable to try to reword the questions tonight. He noted he would vote against rewording this question because he did not believe rewording it would accomplish much. Mayor Costello suggested

that it was Commissioner Partington's prerogative to vote against any rewording done tonight should he wish to do so.

Ms. Patterson advised there would be a second reading where any recommended changes could be voted on.

Mayor Costello suggested anyone with any proposed changes should provide them to the City Attorney; the City Attorney would provide those changes to the Commission without indicating who proposed the changes; and the Commission could study them and vote on them at the next meeting.

Ms. Upchurch noted she was not comfortable proceeding as Mayor Costello suggested.

Commissioner Boyle recommended that between the first and second reading, the Commission place in the next packet any proposed changes; whereby, Ms. Upchurch noted she would be more comfortable with Commissioner Boyle's recommendation.

Mr. Turner suggested presenting the changes to Ms. Patterson as quickly as possible and allowing her to make the distribution to appropriate staff members as well as to the Commission.

Ms. Upchurch noted the information would be distributed in the next packet rather than distributed prior to the other agenda material.

Mayor Costello reported there would be no rewording made tonight, and any changes would go to Ms. Patterson to be submitted in the next packet for the second reading.

Mr. Turner clarified that the Commission would include the current information in the next packet along with a copy of any proposed changes.

Commissioner Kelley noted he was ready to approve the current language and was confident that since it had been passed through the Legal Department there would be no challenge on the language of the ballot. He advised he would prefer to discuss this tonight and should minor changes be required, they could be made at the second reading.

Mayor Costello explained four Commission members did not accept the changes Commissioner Boyle was making, and since they were so confusing he was trying to provide Commissioner Boyle with the opportunity to present the changes in writing where the Commission could study them; and should they be approved, the ordinance be amended at the next meeting. He encouraged Commissioner Boyle to continue with his other changes.

Commissioner Boyle stated he did not have specific language to substitute on Question No. 3 where it stated: "provide for staggered terms of office and provide a transition schedule," but he did not believe this question fully explained what the new law would accomplish.

Mayor Costello pointed out the question begins by stating: "The proposed amendments would increase the terms of office from two years to four years..." which he considered to be quite clear.

Commissioner Boyle noted he had no questions as to the first two lines, but he did question the explanation on how the terms would be staggered. He stated the question needed to explain that in 2007, there would be two-year term for Zones 2 and 4 and four-year terms for Zones 1 and 3, and there would be four-year terms for all zones in 2009.

Mayor Costello stated Commissioner Boyle's recommendation was read into the record, and he urged it be included as an alternative in the next packet to be considered.

Commissioner Boyle stated the last line of Question No. 4 stated: "...and amend the timeframe for holding run-off elections to fill extraordinary vacancies in office from two weeks to four weeks after a special election." He reported he did not understand what that wording meant and requested it be reworded to make it understandable to the voters. Commissioner Boyle stated Question No. 8 would move the regular election date to October, reserving November for runoffs, if needed; however, the question did not mention October or November anywhere. He suggested the three questions that were referenced by the audience tonight which referenced four-year terms, City-wide elections, and moving the election to October be the first three questions on the ballot.



Mayor Costello asked that these issues be included as alternatives. He concurred with Commissioner Boyle relative to moving the three controversial questions to the beginning of the ballot.

Ms. Upchurch asked if she was being asked to reword Question No. 3 or would Commissioner Boyle provide language for that question.

Mayor Costello clarified that Question No. 8 was the only question that needed to be reworded. He noted for the other questions, Commission members would provide wording alternatives should they wish to propose any changes.

Call Vote:	Commissioner Boyle	no
	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
Carried.	Mayor Costello	yes

Mayor Costello called for a short break at 9:10 p.m. and reconvened the meeting at 9:17 p.m.

Item #11 - Parks and Recreation Master Plan

RESOLUTION NO. 2005-157  
A RESOLUTION APPROVING AND ADOPTING A PARKS AND RECREATION MASTER PLAN; SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kent, to approve Resolution No. 2005-157, as read by title only.**

Mr. Ervin stated staff was presenting the final version of the Parks and Recreation Master Plan which was amended pursuant to the comments received from the City Commission and the various advisory boards. He noted the changes that were made have been identified. Mr. Ervin explained this master plan would set the initial groundwork so staff could go forward to make the necessary changes to the Comprehensive Plan, Land Development Code, and impact fees. He noted to proceed with changes to the impact fee system, the City must have a defensible level of service as well as a clearly identified Capital Improvements Program for a five, 10, and 15 year period.

Mr. Rick Boehm, 5 Springwood Trail, Chairman of the Ormond Beach Youth Basketball Association, provided the Commission documents he would be discussing. He stated the benchmarking comparisons for Ormond Beach indicated that Ormond Beach had 13 basketball courts, and the benchmark communities have 14.1 basketball courts. Mr. Boehm noted the second page reported the existing City facilities included Ormond Beach Middle School as the predominant placement in the City for basketball courts; however, the lease with Ormond Beach Middle School has lapsed, and the City did not have a current lease so it could not be considered a City facility. He reported Ormond Beach Middle School does not have eight basketball courts; it has only four courts. Mr. Boehm noted there was a half court at Nova Recreation and a half court at Central Park. He stated the City actually had anywhere from five to nine basketball courts. He reported with five basketball courts, the correct statistical number would become .1303 with a benchmark number 0.360 meaning Ormond Beach had one-third of the basketball courts that the benchmark communities have. Mr. Boehm explained the Facilities Prototype Cost Analysis for Outdoor Basketball Courts indicates the cost was \$26,900 for a basketball court with a gate, fence, grading, and clearing; but he would suggest the City could build them cheaper if they were not fenced. He pointed out Commissioner Boyle and Commissioner Kent had indicated the need for more recreational facilities in their zones. Mr. Boehm stated this master plan did not correctly address basketball courts, the correct number in the City, or the need for the courts. He noted on the last page of the packet entitled Attachment 2, Recreational Facility Deficiencies, it did not include a line for basketball courts; therefore, the Commission could not know how many basketball courts the City should have, the deficiencies, and what was needed. Mr. Boehm stated providing outdoor basketball courts was low maintenance, low cost, and did not take a large area to install. He suggested tasking staff to examine all of the parks in Ormond Beach to determine if there were places where outdoor basketball courts could be placed to bring the number up to a level of the benchmark communities. Mr. Boehm stated in the executive summary and the City-wide recommendations concerning the level of finish in the parks, Ormond Beach had numerous areas where the level of service was poor. He suggested a goal of eliminating those areas where "poor" was checked because that term should not ever apply to Ormond Beach. Mr. Boehm reported these parks do

not meet the standards of other communities or even Ormond Beach's own standards. He stated no exemptions were available so the City must adhere to its own codes.

Mr. Charles Carter, 212 Arlington Way, stated Zone 2 children play on the streets. He noted the City was to have an agreement to use Osceola Elementary Schools, but the area is inaccessible because the gates are locked after school hours. Mr. Carter expressed concern with the sewage problem at the sports complex, the noise issue, and air traffic patterns that change suddenly where airplanes could be traveling over the sports complex. He stated that children can not go to these parks without vehicular transportation, and nothing was considered in Zone 1 and Zone 2. Mr. Carter urged recreation should be provided for the entire City, and he urged raising the lease rent for the airport property where the improvements were to be made.

Mr. Doug Thomas, 132 Riverbluff, urged the Commission to accept the master plan; however, he did want to bring some issues to the Commission's attention. He stated Ormond Beach had four facilities that received a "fair" rating and three received a "poor" rating, after people have spent many years working tirelessly for Ormond Beach recreation. Mr. Thomas urged the Commission to examine the expenditures for the past ten years. He advised that in 1994 the expenditures were \$14,680,000, and \$3,409,000 of that sum went to recreation, equaling 24%. He noted in 2004 the total expenditures were \$24,348,000, and recreation expenditures were \$3,123,000 or only 12% of the budget; therefore, in ten years the City cut the percentage of recreation for children and seniors in half. He questioned the percentage rate spent on employees in the past ten years. Mr. Thomas stated he would be willing to have the Commission raise taxes if it was necessary to invest in Ormond Beach's children. He reported recreation equated to less crime.

Ms. Alice Henry, 193 Bosarvy Drive, stated there were no half basketball courts at Nova Recreation Center since the study was counting the bang wall for tennis where she was able to place a couple of baskets, so this should not count in the report. She stated recreation had been abandoned on the peninsula, and facilities at the Osceola School were no longer available to the children.

Mayor Costello thanked Ms. Henry for all she has done for the children over the years. He stated Item No. 17 indicated lack and acceptable level of finish and listed those that were rated "good," "fair," and "poor." Mayor Costello reported the Ormond Beach Airport Sports Complex, River Bend Nature Park, Sanchez Park, and the Ormond Beach Senior Center were listed as "fair." He stated those reported to be "poor" were the Nova Recreation Center, Ormond Beach Middle School, and Osceola School. Mayor Costello found it incredible that Ormond Beach had and deserved the rating of poor. He stated he wanted agreements with the School Board where the could Osceola playground be opened after hours, and pointed out that this was in the Smart Growth Implementation Committee recommendations for Charter amendments to the County Council. Mayor Costello urged the Recreation Advisory Board to consider what could be done for basketball courts. He stated the City needed four basketball courts at Nova Recreation Center, two at Osceola School, some at Ormond Middle School, and possibly at The Casements where the courts could be used as parking for special events when not in use. Mayor Costello urged getting creative with space. He stated the City had to live by its own codes. He noted this resolution would adjust the level of service for the community park and the natural resource park. Mayor Costello challenged the Recreation Advisory Board to recommend some readjustments of the funding already included in the budget to obtain some outdoor basketball courts. He stated that for the past two years this Commission had provided a great deal of money to try to get back on track to provide better recreation.

Mr. Thomas stated the City had never faired well in negotiations with the school board; whereby, Mayor Costello concurred with Mr. Thomas, but noted that things were changing and the school board was committed to recreation.

Mr. Thomas stated the study indicated that the fields were meticulous, and that was because there was a group of people dedicated to the fields. He reported that taking maintenance out of recreation and placing it in Public Works has been proven not to work; therefore, he urged maintenance be placed back where it belonged.

Mr. Rick Boehm reiterated that Osceola School was no longer a City facility. He noted the report listed two handball courts and a playground at Ormond Middle School, and they no longer existed. Mr. Boehm pointed out that the statistics for some items were not correct, making the level of service incorrect; and this must be taken into account. He stated the statistics indicate there were two community centers, but it did not indicate what condition those centers were in.

Commissioner Kelley stated he accepted the report, but did not accept what it indicated. He noted the City paid a great deal of money for information that it could not do much about.

Commissioner Kelley agreed the report was flawed, and he would not accept the findings. He questioned who was surveyed.

Commissioner Boyle agreed with Commissioner Kelley that the survey was flawed, but stated the Commission must accept the goals. He thanked the speakers tonight for the education, persistent dedication, and many hours spent with the Commission in Chambers and individually. Commissioner Boyle stated the City must live up to all City codes, and he concurred a mistake was made on the maintenance. Commissioner Boyle reported he was convinced the City was in an emergency state on recreation, and the City should use the emergency funds. He noted there was not much interest on the Commission to lower the reserve to provide recreation a jumpstart; but there was a huge deficiency, and these funds could be helpful to Ormond Beach recreation. Commissioner Boyle noted that if the reserve were lowered, the bond rating of the City would be lowered; but the City was not contemplating borrowing any more money at this point. He urged the City to study the interpretation of how Recreation Impact Fees can be used, especially since the City's population has increased greatly. Commissioner Boyle asked the City to appeal to whatever authorities involved to use these funds to solve some of the City's recreation problems.

Mayor Costello stated a recommendation for using a significant portion of the impact fees would be coming to the Commission soon.

Commissioner Partington asked if this could be adopted in light of the errors identified tonight. He questioned if this went through the Recreation Advisory Board; and if so, why these discrepancies were not identified and corrected before they came to the Commission.

Mr. Michael Boucher, Chief Planner, stated there was no separate level of service for basketball courts, but there was a survey filled out by the Leisure Services and Public Works staff that identified the number of basketball courts. He reported the basketball courts and volleyball courts are blended into gymnasium space for the indoor facilities and the outdoor space category. Mr. Boucher noted the City could ask the consultant to provide a separate level of service for basketball courts should the Commission require that information. He stated the City could also correct changes and recalculate the level of service for facilities that were counted last year when they were operable, but were no longer operable.

Commissioner Partington reported he considered it would be appropriate to make the recalculations recommended. He noted the budget report passed on the Consent Agenda without comment; but should events remain stable, the City would have a higher than 15% reserve, and he would be willing to spend the reserve down to 12%. Commissioner Partington noted this extra 3% could help accomplish some goals.

Commissioner Kent deferred to Mr. Turner regarding the 15% reserve.

Mr. Turner stated the 15% related to the overall general fund for fiscal year 2004/05; but next year the expenditures would increase, and the figure would return to 12%. He reported staff would provide more current estimates for the Commission to consider.

Commissioner Kent concurred with Commissioner Partington that he would approve the study with Mr. Boehm's corrections. He noted he had a concern regarding spending \$75,000 on this study; but after discussions with his constituents, he discovered it was something people favored. Commissioner Kent reported while he wanted to be optimistic, in the past the School Board has not come through. He stated when the junior high school changed to a middle school and sports were eliminated for cost saving purposes, the communities suffered. Commissioner Kent reported Osceola Elementary School's rims and courts were in horrible condition. He noted he would set up a meeting with the School Board representative, Judy Conte, to find out what the City and the School Board were to do to keep up the courts. Commissioner Kent pointed out that children can not access it because the gates are locked.

Mayor Costello stated in that the millage was capped, the Commission could no go to a higher millage. He requested the Recreation Advisory Board come back to the Commission with a priority list of anything they would be willing to defer if the City would build more outdoor basketball courts. Mayor Costello questioned what the most pressing need was that the City had not addressed. He concurred the City must work with the School Board, have the fences unlocked, and provide a place for unsupervised play.

Commissioner Kelley stated he did not agree with the projections and costs. He noted the costs provided made it prohibitive to go forward. Commissioner Kelley recommended something such as public-private projects needed to be done. He reported projects had been delayed, and that can not continue; but the Commission must be very careful in spending the money wisely.

Mayor Costello pointed out that some people have been fighting for recreation for years, but the City was finally getting to the point where it was ready to start to reinvest in recreation, which he considered to be important.

Call Vote on the Master Plan with Amendments:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
Carried.	Mayor Costello	yes

Item #12(A) – Temporary Canopies

Mr. Ervin stated staff brought the Commission a discussion relative to temporary canopies last year and asked for direction as to whether or not they should be allowed in Ormond Beach, and the consensus was to not accept the temporary canopies. He noted staff set up a notification process, providing for a grace period, but the hurricanes impacted the removal of the canopies. Mr. Ervin advised there had been 61 cases of compliance, 16 pending cases, and one case was under citation with a special master hearing scheduled. He noted certain concerns had been heard from citizens owning these canopies, and the Commission asked that it be reconsideration by the board. Mr. Ervin explained Mr. Pearson, who initiated some of the proposed language, could not be present tonight. He noted Mr. Pearson's recommendation was that these temporary copies be acceptable with certain criteria. Mr. Ervin asked the Commission for one of three decisions: to keep the original recommendation, to allow temporary canopies in the side and rear yard without specific setback requirements, or to allow temporary canopies as accessory structures or principal structures.

Commissioner Partington stated he considered the action taken last year as appropriate. He noted he did not approve of the temporary nature of these structures, particularly in that they do not apply with the Florida Building Code, they have certain dangers associated with them, and they are a problem aesthetically. Commissioner Partington noted there has been an outcry in the community because many people have these temporary canopies. He reported he could possibly allow the canopies in the back yards if they were properly screened. Commissioner Partington pointed out these structures were a tremendous code enforcement issue. He asked if there were some way to make a reasonable allowance that would satisfy those concerned.

Commissioner Kent agreed that what was done was correct. He noted he spent time with Mr. Pearson and inspected his canopy, and it does not look bad; however, not everyone keeps their canopy in the same good condition. Commissioner Kent stated he would be comfortable bending a little to allow temporary canopies in the back yard if screened properly. After further discussion, he noted that few people take the excellent care of their temporary canopies like Mr. Pearson, and to try to bend the rules for a few people was not the right thing to do.

Commissioner Boyle stated the City finds itself in trouble when it removes rights that previously existed. He noted Mr. Pearson's suggestion was reasonable, and he urged using common sense and compromise.

Commissioner Kelley reported he would support keeping the policy unchanged and enforce the rules.

Mayor Costello stated Commissioner Partington, Commissioner Boyle, and Commissioner Kent have agreed to a compromise.

Mr. Ervin stated he could bring back a standard that would allow temporary canopies in the rear of the yard not visible in the right-of-way.

Mayor Costello stated he would not accept this because he preferred it be a part of the house, but it would be brought back for Commission consideration.

Item #12(B) - Update on Transportation Planning and Funding

Mayor Costello stated Clyde Morris Boulevard, Tymber Creek Road, and Airport Road were listed to be expanded with sidewalks on one side and bike paths on the other. He stated the MPO has adopted a standard for sidewalks on one side and bike paths on the other on all roads. Mayor Costello asked to be informed if there was anything that the TCC, MPO, or the City could do to encourage Ormond Crossings. He noted he did not favor the half-cent sales tax, although the Commission had not yet provided a consensus opinion on this issue.

Mr. Ervin stated County staff has asked the City to identify if the half-cent tax were approved, what projects the City would want to have funded.

Mayor Costello stated that of those listed, he would support the Hand Avenue and Tymber Creek Road projects, although he did not support the tax.

Mr. Ervin stated this could be brought back as a separate discussion item after receiving more details from the County. He noted staff would not make any formal recommendations for or against the tax at this time.

Mayor Costello questioned what happened with the A1A beautification; whereby, Mr. Ervin explained that program was handled under a funding source that could not be used any longer, but he would provide an update.

#### Item #12(C) – Temporary Occupancy of Single-Family Homes

Mr. Ervin stated this was brought forward to clarify the Commission's policy on transient lodging and the use of a single-family home for a hotel type use. He reported the prohibition or approval of this type of use was not clearly delineated in the Land Development Code, and the City has been operating from an interpretation he, as Planning Director, had made. Mr. Ervin requested this be clearly delineated in the City code with a specific policy directed by the Commission. He noted staff contacted other cities pursuant to Commissioner Kelley's request; and while some cities such as New Smyrna Beach allow this use on the beachfront, Daytona Beach and Port Orange had a strict prohibition against this use.

Mayor Costello urged the Commission to consider Bike Week and special events. He also asked the Commission to consider the complaints regarding more bikes in residential areas.

Mr. Ervin reported this question was not asked to be punitive to any individual or to bring forward the definition of family as a focal point. He noted with the Harley Davidson and Destination Daytona projects, Ormond Beach has been receiving more and more inquiries on this issue. Mr. Ervin reported there was a code enforcement complaint relative to a similar type of use, which was why the question of dormitories was mentioned. He stated should the Commission deem this an appropriate use, the City would identify specific areas and districts it would be acceptable; however, if the Commission would prefer it be approved City-wide, it may become a code enforcement issue, and staff expressed a concern in introducing a commercial use into a single-family zoning district.

Commissioner Boyle stated this situation was more pervasive than realized. He stated he had questioned how this evolved, and he was provided only four complaints. Commissioner Boyle noted one complaint was a police matter that did not seem to be involved, another involved a former planner in Daytona Beach, and another was an anonymous complaint against Mr. Thompson. He pointed out that there were no complaints from the Pine Trails homeowners' association. Commissioner Boyle reported the only problems encountered were caused by the cars, not the people. He stated people in his neighborhood rent on a semester basis to Embry Riddle University or community college students. Commissioner Boyle questioned if this could be enforceable or evenly enforced. He stated bikes were more of a problem when bikers visit a house as opposed to the rental of a house to bikers. Commissioner Boyle noted that during race week people rent large expensive homes to race drivers, their families, and members of the media, and he cautioned there may be unintended consequences in this law.

Commissioner Boyle stated the students enrolled at Mr. Thompson's flight school come from outside of the United States, bring no cars, and no complaints have been received in Pine Trails. He reported of the five homes Mr. Thompson owned, including those in Pine Trails, Mr. Thompson received no homestead exemption, thereby paying higher taxes than other homes in the area. Commissioner Boyle stated Mr. Thompson had rented these homes for years without any problem with the existing City code. He noted the tuition and board for Mr. Thompson's student every year was \$2 million of gross revenue generating \$8 million from people who do not require any services. Commissioner Boyle expressed concern that the perception was that this was a bill of attainder against Mr. Thompson. He noted this could disqualify millions of dollars coming into this community for not only Mr. Thompson, but for people coming to town for race weeks. Commissioner Boyle reported the homeowners' rights needed to be considered.

Commissioner Kelley noted that he assumed Ormond Beach did not allow transient residents in a single-family residence. He stated he did not want transient residents living in his community.

City Commission – August 2, 2005

Commissioner Kelley reported the people should listen to facts and not perceive reasons for actions.

Mr. Ervin stated some other communities required a home leased for less than 30 days have the bed tax and similar taxes be paid.

Commissioner Partington stated the interpretation made was not to allow transient residents, and he urged the City to continue not to allow these transient residents. He noted he would answer questions number one and two in the affirmative. Commissioner Partington pointed out a business owner and bed and breakfast owner must comply with these laws, and everyone else operating a similar business should also comply with these laws. He stated a temporary rental would be for any period less than six months. Commissioner Partington noted other communities do not allow these temporary rentals. He stated should the Commission wish to consider to allow rentals for a one-week period for bike week, a registration process should be established where the appropriate fees were paid.

Mr. Bud Connelly, 1 Dorado Beach Court, president of the Pine Trails homeowners' association, stated the homeowners' association has had no complaint regarding this issue.

Ms. Pattie Barker, 1105 Overbrook Drive, clarified that people were allowed to rent a facility three times per year without having to register as a transient facility with the State of Florida. She noted people should be able to rent out their own home if they choose to do so. Ms. Barker stated should her daughter in college decide to stay at her home for Spring Break and bring five friends, they could not stay at her home under this provision. She reported the Commission was attempting to take away the rights of the citizens.

Commissioner Kent stated this was not the type of activity he would want in a single-family area; therefore, he would prefer to leave the same prohibition.

Mayor Costello stated three Commissioners have indicated they would prefer to leave the prohibition, but he would welcome language to require a permit from staff after the Commission set certain criteria allowing certain exceptions if no complaints are filed. He explained in that three Commission members did not agree with this recommendation, staff was to keep the prohibition. Mayor Costello urged anyone favoring this to present some language, and one of the three Commission members may wish to reconsider this issue at some time in the future.

Commissioner Kelley explained there was nothing in this provision that would prohibit a friend or family member from visiting a person's home. He noted this would only apply to renting.

Commissioner Boyle stated he understood code enforcement investigated Mr. Thompson's situation six to ten years ago and deemed it to be appropriate; therefore, he questioned if Mr. Thompson was legal or not at this point.

Mr. Ervin stated the issue was brought forward by Mr. Roger Gardner a number of years ago, and it was determined that if students were occupying the structure for less than six months, it would be considered in violation of the code, but he was not certain of the outcome. He reported he would research the resolution of that matter.

Commissioner Boyle stated he understood Mr. Gardner did not find a violation at that time. He reported people knew what was happening at Mr. Thompson's houses, and he still was unclear as to whether he was legal or not.

Mr. Ervin reiterated staff did not wish to proceed until receiving clarification from the Commission.

Mayor Costello stated three Commission members indicated they did not want any commercial enterprises in single family homes or short term rentals.

#### Item #12(D) - 2006 Legislative Update

Mayor Costello urged off-beach parking, sand, Ormond Crossings infrastructure, A1A beatification, the three chimneys, reuse on the South Peninsula, and septic tanks off the barrier island be included in the 2006 legislative update. He asked that these issues be brought back to the Commission for prioritization and discussion.

Commissioner Boyle's Personnel Record

Mr. Gregory Avakian, 161 Heritage Circle, stated he prepared reading material for the Commission and citizens that he considered to be mandatory reading and began distributing copies to the Commission.

Ms. Upchurch asked Mr. Avakian if the material he was distributing was the same information he provided to her yesterday; whereby, he stated it was the same information. Ms. Upchurch reported she has reviewed this material and was not certain it was appropriate to enter this into the public record in that she was not convinced this was legitimate public business. She noted Mr. Avakian should have a public forum to share his thoughts; however, she did not consider this to be that appropriate public forum. Ms. Upchurch suggested Mayor Costello not accept the information into the record.

Mayor Costello asked if the Commission needed to return the information; whereby, Ms. Upchurch stated that was correct.

Mr. Avakian pointed out that the original documents were brought into the chamber by Commissioner Boyle himself.

Ms. Upchurch stated her recollection was that Commissioner Boyle entered into the record a cover sheet to the material that was inside the "brown envelope." She noted it was not her recollection that the contents of brown envelope were entered into the public record.

Mr. Avakian stated Ms. Upchurch was using semantics because the item was discussed between the Commissioner members.

Ms. Upchurch noted the content of the material was not discussed.

Mr. Avakian noted that the statement that allegations were false was discussed. He stated accusations of distribution were made on the record.

Commissioner Boyle called a point of order. He stated the only items entered into the record were the cover letter and the document indicating who obtained the material. Commissioner Boyle reported he did not consider these subjects City business. He noted he asked the Commission members if they had received the material by mail, and they answered in the affirmative. Commissioner Boyle stated no one accused anyone of distributing the information; he merely stated on the record that until he knew who distributed the information, he would have to hold the single person who had sought the files since 1997 responsible.

Mayor Costello noted he would consider what was stated was an accusation, but he would follow the Deputy City Attorney's ruling and not accept the information. He stated he would not accept the information, but not because they were not entered into the record in that they were referenced when Commissioner Boyle mentioned the brown envelope, but because he did not consider the information to be Commission business.

Commissioner Partington stated when a Commissioner has been given material by an individual, he considered it appropriate to keep that information. He noted he would like to make comments; however, his attorney had advised him not to comment due to pending litigation.

Mr. Avakian stated the second envelope he copied was provided to him by Commissioner Boyle. He noted the envelope was not signed by Jeff Boyle, but by Commissioner Boyle; therefore, when a person places their status on a document and hands it to a citizen, he would consider that document to be in the public domain. Mr. Avakian reported all Commission members have the same right to receive any information provided to a single Commission member. He noted he consulted three separate attorneys who deemed the information to be public domain.

Ms. Upchurch stated different attorneys have different opinions, but it was her job was to protect this City.

Mayor Costello ruled that this would not be entered into the public record, but anyone who would prefer could keep their copy of the document.

Mr. Avakian stated the object of this action was for the citizens to learn the truth. He reported there was no political reason he was presenting these documents. Mr. Avakian reported he believed this should be read by the public because of its contents and who was the subject of

the information. He stated each Commission member was a reflection of the public, and it was important how that reflection would come through. Mr. Avakian noted people should not have to hunt down this information; but if it was on public record at City Hall, this would not be necessary. He stated the Commission was doing a great disservice to the citizens of Ormond Beach for which they are responsible. Mr. Avakian noted this decision should have been made by the entire Commission. He stated after people read this document, they could then make an informed decision and form their own conclusions. Mr. Avakian reported people needed to have easy access to documents already public.

Mayor Costello noted the public could contact Mr. Avakian should they desire to obtain this information.

Mr. Avakian stated while people may consider that he had issues with Commissioner Boyle, he noted he also made accusations regarding Commissioner Kent during the last budget discussions. He noted his issues with Commissioner Kent were financial issues, not moral or ethical issues. Mr. Avakian urged the public to read this material before they rendered judgment. He stated he would return after the public had the opportunity to read this material for further discussion.

Mayor Costello reported he would not allow this to be discussed again.

#### Item #13 - Reports, Suggestions, Requests

##### "Coffee with the Commissioner"

Commissioner Kent thanked the residents who attended his "Coffee with the Commissioner" yesterday. He noted he found it very enlightening.

##### Pace Academy for Girls

Commissioner Kent stated he, Mr. Turner, staff, and various residents met with individuals representing the Pace Academy for Girls discussing benefits to the community and Pace. He noted he was impressed with Pace Academy's presentation, and he was pleased that the Rigby School would not be demolished.

##### Cassen Park Fence and Boat Docks

Commissioner Kent asked for a report on the fence and two boat docks at Cassen Park.

##### Abandoned Boat

Commissioner Kent asked what could be done about the abandoned boat in Zone 2.

##### CFOB Sessions

Commissioner Kelley thanked the Citizens for Ormond Beach for their presentations during the past three weeks.

##### Building Relationships

Commissioner Kelley thanked Commissioner Kent, Commissioner Partington, Mayor Costello, and Mr. Turner for attending the National League of Cities and for their efforts in lobbying. He reported Ormond Beach would be receiving, after approval by President Bush, \$800,000 in federal funds for the study at the interchange at I-95 with the Ormond Crossings project. Commissioner Kelley stated this proved that building relationships with people was very important, and the money spent going to Tallahassee was money well spent. He noted Mayor Costello and Commissioner Partington participated in a "fly in" with Congressman Mica, which was also helpful. Commissioner Kelley thanked staff for their efforts in lobbying the State.

##### Tax Millage

Commissioner Kelley stated the Commission had a short meeting last night where they voted to increase the tax millage rate by 6.64%. He stated for this money Ormond Beach residents would have some of the best-paid employees, and \$500,000 would be placed in a much needed renewal and replacement fund. Commissioner Kelley reported those who do not live in expensive houses would not pay a tremendous amount in taxes, and they would receive a tremendous amount of benefit. He explained that he had stated he would not support the tax increase; but after researching the benefits, he voted by line item on those items he would not support, namely the increased salaries, and he did vote for the entire budget.

##### Announcing Candidacy

Commissioner Kelley stated he would run for the Zone 3 seat in the upcoming election.



#### Vision 2020

Commissioner Kelley thanked staff for their hard work on the three presentations in the Vision 2020 sessions. He stated the City received a great deal of feedback from the citizens.

Commissioner Partington also commended CFOB for the three forums with three different topics, which have started discussion between the City, citizens, and the Commission as to what Ormond Beach would look like in 2020. He thanked Marty and Rita Press for their efforts in this endeavor. Commissioner Partington stated the developers needed to hear what the citizens find to be important, because if they could be responsive to the citizen's needs, they would have a greater chance of moving their projects forward. He urged a summary of each session be provided to the Commission.

#### National Night Out

Commissioner Partington stated he attended the National Night Out at the Nova Recreation Center prior to the meeting tonight, which enjoyed a great attendance.

#### Firefighters and Police

Commissioner Partington thanked the City's firefighters and police officers who have been busy lately.

#### Pace Center

Commissioner Partington thanked Commissioner Kent for his work at the Pace Center.

#### Ormond Crossings

Commissioner Partington stated he was optimistic President Bush would support the bill which would provide the funding and move the Ormond Crossings project along more quickly.

#### Announcing Candidacy

Commissioner Partington announced his intention to seek the Zone 4 Commissioner seat in the upcoming election.

#### CFOB Sessions

Commissioner Boyle stated he attended two of the three CFOB sessions, but many questions have been generated relative to the Ormond Crossings funding. He requested an informational balance sheet displaying cost estimates, potential funding, and a flow chart of the dollars.

#### Airport

Commissioner Boyle asked for an accounting for the truckloads of soil and mulch taken from the airport at the southeast quad. He questioned where the soil was being taken.

#### Appointment Decision to the Budget Advisory Board

Commissioner Boyle stated the appointment decision to the Budget Advisory Board made at the last meeting was an unprecedented rejection of a nominee where he was unsure the City had legal cause to act as it did. He reported he was troubled that there was a public perception that Commissioners who took an oath to support, defend, and protect the laws and rules of Ormond Beach chose to ignore or change the rules they did not like. He stated relative to the various definitions of citizenship, he would hope this would not disqualify employees in City Hall.

#### Ormond Courtyards

Commissioner Boyle stated he was invited to a neighborhood meeting at 7:00 p.m. in the Senior Citizen Center regarding the Courtyards at Ormond. He noted the sketch was of a six story building, but the Commission approved only a three story building. Commissioner Boyle asked if this was changed at some time.

Mr. Ervin reported he would clarify this issue in a Friday letter. He stated staff was unaware of this meeting until 2 p.m. today and was unable to attend.

#### Commissioner Boyle's Personnel File

Commissioner Boyle stated most of the information in the brown envelope was false, but he did provide it to Mr. Avakian at his request. He noted 90% of the information that should have been included was not in that file. Commissioner Boyle reported he presumed that should Mr. Avakian need an explanation, he could call or come to his shop for a clarification and that invitation remained.

#### Pace Meeting

Mr. Turner stated he was excited to attend the Pace meeting. He noted Commissioner Kent did an outstanding job of bringing the parties together and setting the right tone and atmosphere.

CFOB Sessions

Mr. Turner stated CFOB did an outstanding job taking controversial issues and leading discussion. He thanked staff for their support of this effort.

Ormond Crossings

Mr. Turner stated the City reached a significant milestone with Ormond Crossings. He commended Mayor Costello for building relationships with the School Board, State, federal, local, and County officials and these efforts were paying off in a number of ways. Mr. Turner pointed out that this \$800,000 would be received strictly because the City encouraged a relationship with Representative Mica. He noted he understood the Commission's concern relative to travel, but when in Tallahassee or Washington, visits are made to congressmen, senators, and representatives talking about important Ormond Beach issues and delivering packets of information. Mr. Turner stated there would be some sort of formal celebration for this achievement.

Recreation Advisory Board

Mr. Turner noted he would attend the Recreation Advisory Board meeting tomorrow to discuss leadership in the Leisure Services area, and he would provide information in the Friday letter. He stated this would require a great deal of community involvement.

Breakaway Trails

Mayor Costello apologized for the confusion on the Breakaway Trails homeowners' association issue and indicated the homeowners' association business had no place at the City Commission meetings.

Pace Center

Mayor Costello expressed excitement relative to the Pace Center. He was hopeful the Head Start would work out an arrangement with the Pace Center.

Halifax Urban Ministries

Mayor Costello stated Halifax Urban Ministries needed additional space for outdoor storage. He asked if the City could help them in some way, such as to provide screening.

League of Cities

Mayor Costello thanked those who attended the National League of Cities and the Florida League of Cities meetings. He noted he worked hard trying to build relationships locally and believed it to be very important as that many Commission members attend as possible.

Appointment Process

Mayor Costello stated he came to the last meeting planning to vote for Mr. Thompson, but he accepted the comments relative to the definition of the word "citizen." He noted that Ms. Upchurch noted earlier that different attorneys have different opinions, which made it difficult to know when to listen to which attorney. Mayor Costello stated this should provide closure on this issue and not be discussed any further. He urged caution because had Commissioner Boyle not brought the "brown envelope" up in discussion, he could have not allowed any of the discussion on the issue; but in deliberations with attorneys prior to this meeting, he was informed that since it was brought to the public, the public had a right to discuss the matter.

Item #14 – Close the Meeting

The meeting was adjourned at 11:17 p.m.

APPROVED: August 16, 2005

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk