

**Palmetto City Council
August 6, 2001 7: 00 PM**

Elected Officials Present:

**Pat Whitesel, Mayor
Shirley Bryant, Vice-Mayor
Tamara Cornwell, Council Member
Donna Keefer, Council Member
Mary Lancaster, Council Member
Brian Williams, Council Member**

Staff and others present:

**Alan Prather, City Attorney
Karen A. Conlon, City Clerk
Capt. Garry Lowe, Palmetto Police Department
Mike Hickey Public Works Department
Tanya Lukowiak, CRA Director
Diane Ponder, Administrative Assistant**

Pastor Greg Burgess of Palmetto Church of the Nazarene gave the invocation, followed by the pledge of allegiance to the United States flag.

Pastor Burgess requested approval from Council for the use of Palmetto police vehicles in the making of a Christian film being shot in the city, explaining where and how the vehicles would be utilized. Discussion was held between the attorney and Council Members concerning the request. Staff was instructed to contact Florida League of Cities, the city's insurance carrier, about the city's liability exposure.

MOTION: Mr. Williams moved, Ms. Bryant seconded and motion carried unanimously to approve the use of the vehicles contingent upon information received from the Florida League of Cities.

Council Member Tamara Cornwell read a proclamation declaring August 26, 2001 as Women's Equity Day.

1. PUBLIC HEARING – ORDINANCE NO. 01-710

Ordinance No. 01-710 was read by title.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, RELATING TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4); PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR NPDES PERMITS; PROHIBITING AND LIMITING CERTAIN DISCHARGES SPILLS AND DUMPING TO THE SYSTEM; PROVIDING FOR INSPECTIONS AND MONITORING; PROVIDING FOR ADMINISTRATIVE ORDERS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Whitesel opened the public hearing. There was no public comment; public hearing was closed.

MOTION: Mrs. Keefer moved, Ms. Bryant seconded and motion carried unanimously to adopt Ordinance No. 01-710.

2. 1ST READING & APPROVE FOR ADVERTISING ORDINANCE NO. 01-704

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, AMENDING THE MASTER UTILITY SYSTEM REGULATIONS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR AMENDMENT TO SECTION 29-33 (c) (1) AND (2), MONTHLY CHARGES, CITY CODE; PROVIDING FOR CREATION OF SECTION 29-33 (d), MONTHLY RATE FOR RECLAIMED/REUSE WATER CONSUMPTION, CITY CODE; AMENDING SECTION 29-34 (a), DETERMINATION FOR NON-CONNECTED STRUCTURES, CITY CODE; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

Discussion was held on the definition of a “unit”. Mr. Prather stated the Master Utility Ordinance adopted in October 2000 contains the same definition as the ordinance being read tonight. He further stated the Master Utility Ordinance received significant inspection by a consortium before its adoption.

MOTION: Mr. Williams moved, Ms. Bryant seconded and motion carried 4 to 1 to approve Ordinance No. 01-704 for advertising and schedule a public hearing August 20, 2001. Ms. Cornwell voted no.

3. 1ST READING & APPROVE FOR ADVERTISING ORDINANCE NO. 01-711

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA APPROVING A GENERAL DEVELOPMENT PLAN AND ELEVATIONS FOR THE LAGUNA AT RIVIERA DUNES, PARCELS 13 AND 14, ATTACHED HERETO AS EXHIBIT "A", PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (LAGUNA AT RIVIERA DUNES)

MOTION: Mrs. Keefer moved, Mr. Williams seconded and motion carried unanimously to approved Ordinance No. 01-711 for advertising and schedule a public hearing August 20, 2001.

4. CRA BUDGET TRANSFER REQUEST

MOTION: Ms. Bryant moved, Mrs. Keefer seconded and motion carried unanimously to approve the CRA request to transfer \$20,500 from Contract Services-Reserve, depositing \$15,000 to Attorney and \$5,500 to Audit Services line item accounts.

Mrs. Conlon advised Council CRA Director Tanya Lukowiak has expressed the desire to remain a part of the city's retirement plan. Mrs. Conlon also suggested looking at the CRA administrative assistant's contract to determine if it is possible to include her in the retirement plan vs. making a semi-annual disbursement of her retirement benefits. Mrs. Conlon stated conversation had taken place with Scott Christiansen, attorney for the General Employee's Pension Plan, who stated Mrs. Lukowiak's request was permissible under the retirement plan, based on Council's approval.

MOTION: Ms. Bryant moved, Mrs. Keefer seconded and motion carried unanimously for the inclusion of the CRA Director in the General Employee's Retirement Plan, contingent upon documentation from Attorney Christiansen.

5. SPECIAL FENCE PERMIT-TROPIC ISLES M.H.P.

The item was tabled as a staff member was not present to answer a question concerning a 54 inch on a four-foot fence.

6. TERRA CEIA BAY GOLF & TENNIS CLUB SWIMMING POOL

Discussion was held on the reimbursement of the \$7 monthly refuse collection fee. Mr. Prather discussed the ordinance covering curbside pickup. This topic was deferred until the August 20, 2001 meeting so staff could determine if the pool company removing refuse at the site is a franchised company in the city. Mr.

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Hickey and Mrs. Conlon were instructed to meet with Mr. Prather to review the information.

7. PUBLIC WORKS APPROVAL FOR BUDGET TRANSFER

Mr. Hickey informed Council the MadVac is a self-contained unit operated by one employee. Mrs. Conlon stated the request exceeds the amount budgeted, thus the approval requirement. Mr. Hickey stated the \$31,248 is the price under the piggy-back bid.

MOTION: Mrs. Keefer moved, Ms. Bryant seconded and motion carried unanimously to approve the purchase of a MadVac 101D not to exceed \$31,248 and approve a budget transfer of \$11,275 from Improvements Not Building into Machinery and Equipment.

8. CONSENT AGENDA

- A) Minutes: July 16, July 23, July 30, 2001 Council Meetings, July 30, 2001 Budget Workshop
- B) July Check Register
- C) Dye, Deitrich, Prather, Petruff & St. Paul Billing through June 30, 2001
- D) Special Function Permit: Walk for Life

The following corrections to the minutes were made:

- July 16, 2001 Minutes: Corrected to state Ms. Bryant submitted the name of Ellen Leonard to serve on the Charter Review Committee.
- July 23, 2001 Minutes: Corrected to include the \$2 monthly fee CARU customers will be charged for reuse.
- July 30, 2001 Minutes: Corrected to state the interlocal agreement for the parking lot is between the city and the Methodist Church.
Corrected to show Mr. Prather was not in attendance.

MOTION: Ms. Bryant moved, Ms. Cornwell seconded and motion carried unanimously to approve the Consent Agenda, with corrections as noted.

9. LEASE/PURCHASE AGREEMENT AND RESOLUTION NO. 01-13

The Master Lease Agreement with Leasing 2, Inc. for three Crane Carriers with 25-yard Loadmaster Bodies, totals \$361,960, which includes \$40,690 in interest. Mr. Prather stated that by adopting Resolution No. 01-13, the city would be approving the lease/purchase of the three sanitation trucks.

Mr. Prather read Resolution No. 01-13 in its entirety.

Mr. Prather stated he had reviewed the documents and they appeared to be in good legal form. The leasing company was notified of a typographical error, which will be corrected in the original document. Mr. Prather discussed the conditions of the lease, specifically stating the City could not appropriate general tax revenues, ad valorem tax money, for the purchase or payment of the lease amount.

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried unanimously to adopt Resolution No. 01-13 and authorize the Mayor to sign the pertinent documents.

10. DEPARTMENT HEAD REPORT

Mrs. Conlon, City Clerk

Regarding the Creel property, the motion to dismiss was not granted. Staff is in the process of gathering documents the city has been instructed to produce.

Explained approval was needed to pay the JEA invoices discussed in her memo to Council dated July 30, 2001.

MOTION: Mr. Williams moved, Mrs. Lancaster seconded and motion carried unanimously to move forward with payment of the bills as presented by JEA.

Discussed the scheduled September 3, 2001 Council Meeting.

MOTION: Ms. Cornwell moved, Mrs. Keefer seconded and motion carried unanimously to cancel the September 3, 2001 meeting in honor of Labor Day.

Council previously requested CRA address a list of projects that would affect its budget, which have not yet been answered. Mrs. Lukowiak stated when the list is produced the information will be gathered. She discussed the work that has been completed on the budget to date. The CRA Budget Workshop was set for August 20, 2001 at 5:30 p.m.

Additional Budget Workshops were set for August 13, 2001 at 5:00 p.m., August 27, 2001 at 4:30 p.m. and September 10, 2001 at 5:00 p.m.

11. MAYOR'S REPORT

Mayor Whitesel reappointed Alan Prather of the firm of Dye, Deitrich, Prather, Petruff & St. Paul as the City Attorney.

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Mrs. Keefer voted yes on the reappointment, stating she would like to see the reappointment time extended to January 2003, as had been done with Mr. Hickey and the Chief last year.

Mr. Williams read into the record a letter from Mr. Prather, a copy of which is attached hereto and made a part of these minutes. Mr. Williams stated his concerns about verbiage in the letter as it related to the term of the appointment and the fees the professional fees the firm is seeking, as they relate to the city's charter and ordinances. Mr. Williams voted no.

Mrs. Lancaster commented on a portion of the letter stating "Council who opposed the advice being rendered", stating she had never opposed the advice Mr. Prather gave, she opposed the advice he did not give. She also discussed the length of the appointment being requested by Mr. Prather. Mrs. Lancaster voted no.

Mr. Prather commented on items contained in the letter addressed to Council.

MOTION: Ms. Bryant moved, Mrs. Keefer seconded to confirm the nomination by the Mayor and extend the terms through January 1, 2003, according to Mr. Prather's letter.

Ms. Bryant commented the term was not unusual with what had been done with the department heads and her belief there were a lot of pressing matters the city has to address.

Ms. Cornwell stated there was no vote.

Ms. Bryant withdrew her motion and Mrs. Keefer withdrew her second.

12. INDIVIDUAL COMMENTS

Ms. Cornwell

The banking proposals are being reviewed by Mrs. Conlon. A synopsis will be provided for Council as quickly as possible.

Requested that the businesses recycling notification be reworded and republished on the utility bills.

Potholes are becoming an increasing problem throughout the city. Asked that staff continue to notify the Public Works Department of needed repairs. Stated her belief new roads are needed throughout the city.

Mrs. Keefer

When items are placed on the agenda, the presenter of the item should be in attendance at the meeting.

Individuals making public comments should state their names and addresses.

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Thanked Mr. Hickey for his help with the Hidden Lakes issue and the vehicles they discussed.

Commented on the number people cited with no driver's license.

Mrs. Lancaster

Frank Peterman will tour the city August 9, 2001 at 2:00 p.m.

Commented on the fact the majority of individuals issued citations were Hispanic.

Mr. Williams

The result of the walk through at Hidden Lakes will be received tomorrow. Mr. Hickey will also check on the grant funds. Council will be given information on both topics.

Commented on his reasoning concerning the appointment of the City Attorney.

Ms. Bryant

The Historic Society has expressed the hope the expansion of the sprinkler system can be included in the budget process. October 6 is slated for cleaning the Cypress House. December 7 and 8 are the dates scheduled for Project Child Care Christmas program. The Society will be preparing a new cookbook.

The EOC has prepared a flow chart regarding flooding in the city. Copies will be provided to Council. Information on dead-end streets off 8th Avenue is being compiled.

Asked Mr. Hickey to retrieve information regarding the plantings at Lake Rowlett. Mr. Hickey was also asked to confirm the correct spelling of the name of the lake on the signage.

A resolution from Peace River Water Authority will be adopted at a later date.

13. PUBLIC COMMENT

David and Lisa Potter spoke to Council concerning the problem with flooding, the manhole cover and the sewer system on 20th Avenue, West. He also commented on the sewage and chlorine in the canal. Mr. Hickey was instructed to prepare a written report for the August 20, 2001 meeting.

Meeting adjourned at 10:20 p.m.

Minutes approved:



**Karen A. Conlon
City Clerk**

cc. City Council
Karen Conlon
news/media

DYE, DEITRICH, PRATHER, PETRUFF & ST. PAUL, P. L.

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Of Counsel:
Robert L. Scott†

July 31, 2001

The Honorable Pat Whitesel, Mayor
City of Palmetto
P. O. Box 1209
Palmetto, FL 34220-1209

Re: City of Palmetto; Proposal For Reappointment
As City Attorney

Dear Mayor Whitesel:

In keeping with our recent discussions regarding the above-referenced matter, we have evaluated the possibility of reappointment as City Attorney and would be amenable to that fact upon certain conditions.

Obviously, one of the primary issues for any professional in dealing with this representation is the chilling effect of the present appointment provisions within the City Charter and Code.

The City obviously expects and is entitled to receive from its legal counsel, competent legal advice that is not influenced by political issues nor agendas by various community factions so that the advice rendered is predicated solely upon the best interest of the City as the client. However, the present process has the potential for establishing a negative professional relationship for the City when any two members of the City

Council who oppose the advice being rendered can effectively veto the wishes of the majority. Nevertheless, I believe a compromise can be established through the existing provisions of the Charter and Code to address these issues in the short term while the City considers the general appointment issue along with other matters for a Charter amendment in the future.

As you know, our firm offers a full range of services relating to local government law with three members of the firm being certified by the Florida Bar as specialists in City, County and Local Government Law. The firm also has an expertise in environmental matters. Additionally, a member of the firm has a significant concentration in police and public employee issues as well as, Americans With Disabilities Act and sexual harassment issues as they apply to local government operations. Therefore, we consider ourselves to be uniquely qualified to continue to represent the City.

As a result of our discussions, we propose to continue to represent the City as City Attorney under an agreement with the City Council based on a two-tiered approach upon the following terms:

A. Regular, customary and normal City Attorney representation involving non-litigation/non-administrative proceedings will be rendered at the rate of \$155.00 an hour. This representation would involve attending the two regular City Council meetings per month and administrative meetings as requested or necessary; preparation of all documents such as ordinances, contracts, resolutions, comprehensive plan amendments, land development code/land use regulations; addressing purchasing issues; and advising staff and elected officials regarding environmental, public employee and general local governmental issues.

B. Specialized City Attorney services to include all litigation and administrative hearings/proceedings, including actions at law or in equity, any appeals, Department of Administrative Hearing proceedings, EEOC proceedings, Burt Harris Act proceedings, eminent domain, mediation, dispute resolution or arbitration will be rendered at the rate of \$165.00 per hour.

The foregoing representation will be effective from September 1, 2001, through January 1, 2003. Effective with the appointments considered by the City in January, 2003 (assuming the Charter and appropriate ordinances have not been revised or

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amended), we would request Council approval for a two-year period and renegotiation of the rate to address an appropriate scope of services and fees for the continued representation of the City should we be appointed for that period of time.

After you have had an opportunity to review the foregoing, please contact me concerning any questions or issues you may have regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan Hardy Prather", with a long horizontal flourish extending to the right.

Alan Hardy Prather

bp
cc: City Council

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