

CITY OF PALM BAY, FLORIDA

SPECIAL COUNCIL MEETING NO. 2007-14

Held on Monday, the 30th day of April 2007, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

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

The meeting was called to order at the hour of 7:10 P.M.

ROLL CALL:

MAYOR:	John J. Mazziotti	Present
DEPUTY MAYOR:	Ed Geier	Present
COUNCILMEMBER:	Patrick Woodard	Present
COUNCILMEMBER:	Donna Brooks	Present
COUNCILMEMBER:	Andy Anderson	Present
CITY MANAGER:	Lee Feldman	Present
CITY ATTORNEY:	Nicholas Tsamoutales	Present
DEPUTY CITY CLERK:	Terese Barber	Present

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

BUSINESS:

1. Ordinance No. 2007-29, amending the Code of Ordinances, by repealing Chapter 173, Adult Entertainment Code, and substituting a new chapter titled "Adult Entertainment Code" regulating adult entertainment establishments and sexually-oriented businesses, for second and final reading.

The City Attorney read the ordinance in caption only. Michael Kahn, Special Counsel, presented the ordinance amendments as directed by Council. He introduced Barry Inman, an epidemiologist for Brevard County Health Department, who provided background information related to the increase of sexual disease problems within the state and county.

Mr. Kahn provided a synopsis of citizen comments which included raising impact fees, alcohol sales, application and renewal fees, litigation, sexual predators, bookstores, multiple use businesses, enforcement, and billboard advertisements. He elaborated on same and answered questions regarding various sections of the ordinance posed by councilmembers. Deputy Mayor Geier asked if a provision could be included mandating a six month health and safety examination for employees. Mr. Kahn advised that the dancers were protected by U.S. Supreme Court and the city could not enforce same.

The public hearing was opened. Citizens commented on various provisions within the ordinances. The public hearing was closed.

Motion by Deputy Mayor Geier, seconded by Mrs. Brooks, to adopt Ordinance No. 2007-29, as amended. Mr. Anderson asked if mobile billboards could be utilized by the adult entertainment businesses. Mr. Kahn stated the ordinance provided an advertising limit for on-site premises only and limited the wording of same. Council concurred that the amendments were not substantial changes to the ordinance. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilwoman Brooks, Yea; Councilman Anderson, Yea.

2. Ordinance No. 2007-30, establishing locational and distance requirements for adult entertainment establishments and sexually-oriented businesses, for first reading.

The City Attorney read the ordinance in caption only. Mr. Kahn stated that included within the ordinance was a distance requirement between establishments selling alcohol and adult entertainment businesses. Although the regulatory ordinance prohibited the sale or consumption of alcohol on the same premise, an adult entertainment establishment could still be placed next to an establishment selling alcohol.

Mr. Watkins advised that staff reviewed all areas of the city which allowed adult entertainment establishments. The areas were comprised of commercially zoned properties. He stated it would be difficult to fulfill the distance requirements next to daycares as there were many located in the commercial areas. Although there were five commercially zoned categories, staff felt that Neighborhood Commercial, because of its nature and design, would not be appropriate for that type of establishment. There were also nearby schools and residential properties abutting those particular locations. He stated there were three potential areas to consider for placement of adult businesses: 1) a portion of the area initially considered, which was the southeast quadrant of Malabar Road and Babcock Street; 2) the northeast quadrant of Malabar Road and I-95; and 3) west of Harris Corporation near the City's fire station.

Mr. Woodard expressed concern with regard to the creation of a "red light" district. He was extremely opposed to creating three districts of that nature. He stated direction needed to be given to staff to allow enough open places so adult businesses were not concentrated in one specific area. Deputy Mayor Geier agreed that the location should not be in three areas. He suggested that only one area be chosen with guidelines provided for same. Mr. Feldman stated parameters needed to be provided so an ordinance could be drafted that would be legally defensible and meet the desires of Council. Mr. Anderson suggested a workshop to discuss same. Mr. Kahn recommended that Council continue the ordinance to provide protection to the city and receive further input from residents.

Motion by Deputy Mayor Geier, seconded by Mrs. Brooks, to table Ordinance No. 2007-30 pending a workshop to discuss same. Mr. Woodard expressed concern with regard to the distance requirements for alcohol establishments. Mr. Kahn suggested continuing the ordinance with an amendment to delete the locational requirements only.

Motion by Mr. Woodard, seconded by Mr. Anderson, to amend Ordinance No. 2007-30 by deleting the locational requirements and maintaining the alcohol distance requirements. Mayor Mazziotti asked if the locations were deleted, could the entire city be affected by adult entertainment establishments. Mr. Kahn confirmed same. Mr. Woodard stated that if an adult entertainment district were established, problems would be created with the future sale of properties in that area. Property owners would have to disclose that the property was located in an adult entertainment district. *(This motion was not disposed of at this time; it was repeated after the public hearing and a vote taken at that time.)*

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

Mrs. Brooks withdrew her second to the motion to table Ordinance No. 2007-30. Mr. Anderson seconded the motion. Mr. Woodard stated Mr. Anderson's second was out of order. Mr. Anderson withdrew his second to the motion to table the ordinance as he wanted the motion to include the amendment. He suggested opening the public hearing. The motion to table Ordinance No. 2007-30 died for lack of a second.

Motion by Deputy Mayor Geier to deny Ordinance No. 2007-30. Motion died for lack of a second.

The public hearing was opened. Citizens expressed concern with regard to the locational requirements. The public hearing was closed.

Motion by Mr. Woodard, seconded by Mr. Anderson, to amend Ordinance No. 2007-30 by removing any reference to an adult entertainment district, but maintaining the distance requirements between an alcohol establishment and adult entertainment business. Mayor Mazziotti stated he would not support the ordinance as he did not want adult businesses throughout the city. Deputy Mayor Geier concurred. Motion carried with members voting as follows:

Mayor Mazziotti	Nay
Deputy Mayor Geier	Nay
Councilman Woodard	Yea
Councilwoman Brooks	Yea
Councilman Anderson	Yea

Mr. Woodard advised that Sections 1 and 2 of the ordinance would remain, and Section 3 would be removed in its entirety. Mr. Feldman stated that Council did not adopt the ordinance for first reading.

Motion by Mr. Woodard, seconded by Mrs. Brooks, to table Ordinance No. 2007-30. Motion carried with members voting as follows:

Mayor Mazziotti	Yea
Deputy Mayor Geier	Nay
Councilman Woodard	Yea
Councilwoman Brooks	Yea
Councilman Anderson	Yea

3. Ordinance No. 2007-31, establishing provisions prohibiting public nudity, for second and final reading.

The City Attorney read the ordinance in caption only. Mr. Kahn stated that the information provided to Council regarding Ordinance No. 2007-29 also applied to Ordinance No. 2007-31.

Motion by Mr. Woodard, seconded by Deputy Mayor Geier, that all case study and testimony pertaining to Ordinance No. 2007-29 applied to Ordinance No. 2007-31. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilwoman Brooks, Yea; Councilman Anderson, Yea.

The public hearing was opened and closed as there were no comments.

Motion by Deputy Mayor Geier, seconded by Mrs. Brooks, to adopt Ordinance No. 2007-31. Motion carried with members voting as follows: Mayor Mazziotti, Yea; Deputy Mayor Geier, Yea; Councilman Woodard, Yea; Councilwoman Brooks, Yea; Councilman Anderson, Yea.

Mayor Mazziotti advised that a workshop would be scheduled at a later date to discuss the locational requirements.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 10:21P.M.

John J. Mazziotti, MAYOR

ATTEST:

Terese Barber, DEPUTY CITY CLERK