

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2022-24

Held on Thursday, the 1st day of September 2022, 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 6:00 P.M.

Bishop Merton Clark, Truth Revealed Ministries, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

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|---------------------------|-----------------|---------|
| MAYOR: | Rob Medina | Present |
| DEPUTY MAYOR: | Kenny Johnson | Present |
| COUNCILMEMBER: | Randy Foster | Present |
| COUNCILMEMBER: | Donny Felix | Present |
| COUNCILMEMBER: | Peter Filiberto | Present |
| CITY MANAGER: | Suzanne Sherman | Present |
| CITY ATTORNEY: | Patricia Smith | Present |
| DEPUTY CITY CLERK: | Terri Lefler | Present |

CITY STAFF: Joan Junkala-Brown, Deputy City Manager; Frank Watanabe, City Engineer; Alexandra Bernard, Growth Management Director.

ANNOUNCEMENTS:

Deputy Mayor Johnson announced the following vacancies and solicited applications for same:

1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student member' position).++

2. One (1) term expiring on the Melbourne-Tillman Water Control District Board.++

AGENDA REVISION(S):

Ms. Sherman advised that consideration of a co-sponsorship with Representative Randy Fine and Farm Share for free food distribution events was added as Item 2, under New Business.

PROCLAMATIONS AND RECOGNITIONS:

The proclamation was read.

- 1. Proclamation: Chiari Malformation Awareness Month - September 2022. (Mayor Medina)**

PUBLIC COMMENT(S)/RESPONSE(S): (Non-agenda Items Only)

Individuals made general comments.

1. Peter Flores, resident, commented on the backup of traffic in the Lockmar area due to Pineapple Cove.

Mr. Watanabe advised that traffic issues had lessened but he was in communication with the school and said they wanted to be involved in resolving the issues. He responded to questions posed by councilmembers.

PUBLIC HEARING(S):

- 1. Ordinance 2022-88, amending the Code of Ordinances, Chapter 52, Boards, Subchapter 'Utilities Advisory Board', by repealing the subchapter in its entirety, thereby dissolving the Palm Bay Utilities Advisory Board, final reading.**

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

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt Ordinance 2022-88. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

- 2. Ordinance 2022-89, amending the Code of Ordinances, Chapter 36, Recreation Department, by including provisions prohibiting smoking and vaping within municipal parks, final reading.**

The City Attorney read the ordinance in caption only. The public hearing was opened. Ms. Sherman presented the request to Council.

A resident spoke against the request and questioned the smoking areas. Other residents supported the ordinance and said that cigars should also be banned.

Mayor Medina clarified that there were designated areas for smoking. Ms. Smith said that the State would not allow local governments to regulate unfiltered cigars. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2022-89. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

3. Ordinance 2022-87, vacating a portion of the road right-of-way known as Maplewood Street, lying southeasterly of the southerly right-of-way of Pospisil Avenue and adjoining the easterly right-of-way of the Florida East Coast Railway, as recorded in Plat Book 2, Page 3, of the Public Records of Brevard County, Florida (0.30 acres, more or less) (Case VRW-3-2022, Space Coast Marinas LLC), first reading. (CONTINUED FROM 08/18/22 RCM)

Staff approved the request with the following conditions:

- Pre post conditions; historical drainage to this right-of-way shall not be blocked.
- Vacating of Street/Right-of-Way contingent upon proof of ownership of Parcel ID: 28-37-24-27-2-8.
- The applicant shall provide adequate conveyance, and maintenance of the drainage area to maintain roadway and adjacent property drainage conveyance substantially in conformance with the existing historical drainage plan. Compliance with this requirement shall require the applicant design a revised drainage system of the parcels, receive approval of that design from the City, and the St. Johns River Water Management District (if required), and construct the improvements.
- The applicant shall provide all required improvements, dedication of utility, and drainage easements as required by the Palm Bay Utilities Department and Public Works Department. All easements, plans, and agreements shall be completed within one year of the date of approval of this request.

The City Attorney read the ordinance in caption only. The public hearing was opened. The applicant was not present. Ms. Sherman presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve Ordinance 2022-87, to include staff's conditions. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

4. Ordinance 2022-90, amending the City’s Comprehensive Plan Future Land Use Map to change the designated use of property located south of and adjacent to Doreatha Fields Avenue, in the vicinity west of Northview Street, from Light Industrial Use to Multiple-Family Residential Use (3.00 acres) (Case CP-17-2022, Dudley E. Garner and Sue E. Garner Revocable Trust), only one reading required.

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Miguel Reynaldos, representative for the applicant, presented the request to Council.

Residents spoke against the request, stating there were so few industrial sites left in the city, there were stormwater issues in the area and the Northshore development was already too much for the area to handle.

Mr. Reynaldos responded that the applicant would be working with staff through the site investigation process and that stormwater was mandatory. He said many of the comments would be addressed during the site plan process.

Ms. Sherman said that as part of the Comprehensive Plan review process, staff was looking at areas that there were not yet developed for the potential to expand and add more commercial/light industrial zoning districts as those types were needed in the city.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2022-90.

Motion carried with members voting as follows:

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| Mayor Medina | Nay |
| Deputy Mayor Johnson | Yea |
| Councilman Foster | Yea |
| Councilman Felix | Yea |
| Councilman Filiberto | Nay |

5. Ordinance 2022-91, rezoning property located south of and adjacent to Doreatha Fields Avenue, in the vicinity west of Northview Street, from LI (Light Industrial and Warehousing District) to RM-15 (Single-, Two-, and Multiple-Family Residential District) (3.00 acres) (Case CPZ-17-2022, Dudley E. Garner and Sue E. Garner Revocable Trust), first reading. (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request, subject to substantial conformance to the submitted concept plan.

The City Attorney read the ordinance in caption only. The public hearing was opened. Miguel Reynaldos, representative for the applicant, presented the request to Council.

Connie McCleary, resident, asked if the units would be rented to anyone. She expressed concern about flooding. Mr. Reynaldos said there would be a property manager that would oversee the site pursuant to Federal rules and regulations. Credit checks would be performed but he was unsure about background checks.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve Ordinance 2022-91, subject to substantial conformance to the submitted concept plan.

Motion carried with members voting as follows:

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| Mayor Medina | Nay |
| Deputy Mayor Johnson | Yea |
| Councilman Foster | Yea |
| Councilman Felix | Yea |
| Councilman Filiberto | Nay |

6. Resolution 2022-41, granting a conditional use to allow for a car wash at a proposed automobile service establishment in CC (Community Commercial District) zoning, on property located at the northwest corner of Minton and Malabar Roads (2.06 acres) (Case CU-34-2022, Cole Oliver, West Malabar Properties, LLC). (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the resolution in caption only. The public hearing was opened. Casey Walker, CSC Properties, LLC and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to adopt Resolution 2022-41. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

7. Resolution 2022-42, granting a conditional use to allow for storage of liquefied petroleum products, chemicals and similar products in HI (Heavy Industrial District), on property located south of and adjacent to Rowena Drive, in the vicinity north of Robert J. Conlan Boulevard and east of the Florida East Coast Railway (0.46 acres) (Case CU-35-2022, Joseph Beatty, FAR Research, Inc.). (Quasi-Judicial Proceeding)

The Planning and Zoning Board recommended denial of the request.

The City Attorney read the resolution in caption only. The public hearing was opened. Representatives for the applicant from the AVID Group and Akerman, LLC presented the request to Council. Mr. Filiberto asked if there were any open violations or incidences in the past two months. The response was in the negative. The representatives answered questions posed by councilmembers.

Attorney Richard Dewitt, representative for the aggrieved party, MLEF, presented his case. He said MLEF was opposing the request due to the proposed storage of liquefied petroleum products and of chemicals and similar products. Mr. Dewitt said the applicant did not meet the review criteria for Comprehensive Plan compatibility; specifically, Section 185.087(D) and (G). He provided a history of violations, incident reports, warning letters from the Florida Department of Environmental Protection, and fire inspection reports from the City. He responded to questions posed by councilmembers.

Residents located adjacent to the site spoke against the request.

Due to a medical emergency, a brief recess was taken after which time the meeting resumed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to continue Resolution 2022-42 to the September 15, 2022, regular Council meeting. At that time, the public hearing would continue at the cross examinations/rebuttals and presentations would not be reheard. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

8. Ordinance 2022-92, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'District Regulations', by removing certain provisions related to arcade amusement centers within CC (Community Commercial District) and HC (Highway Commercial District) zonings (Case T-40-2022, City of Palm Bay), first reading.

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Ms. Bernard presented the request to Council.

Individuals made general comments. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve Ordinance 2022-92.

Motion carried with members voting as follows:

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| Mayor Medina | Nay |
| Deputy Mayor Johnson | Yea |
| Councilman Foster | Yea |
| Councilman Felix | Yea |
| Councilman Filiberto | Nay |

9. Ordinance 2022-93, amending the Code of Ordinances, Chapter 170, Construction Codes and Regulations, Subchapter 'Walls and Fences', by modifying provisions for fences on corner lots (Case T-41-2022, City of Palm Bay), first reading.

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Ms. Bernard presented the request to Council. A resident asked that Council consider handling fence requests on a case-by-case basis. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve Ordinance 2022-93. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

10. Ordinance 2022-94, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter 'Planned Unit Development (PUD)', by modifying standards contained therein (Case T-42-2022, City of Palm Bay), first reading.

The Planning and Zoning Board recommended approval of the request.

The City Attorney read the ordinance in caption only. The public hearing was opened. Ms. Bernard presented the request to Council. The public hearing was closed.

Motion by Mr. Felix, seconded by Deputy Mayor Johnson, to approve Ordinance 2022-94. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

11. Request by Chaparral Properties, LLC, for a Final Development Plan to allow a proposed Planned Unit Development (PUD) for a residential development to be known as ‘Chaparral Phase IV and V’, which property is located in the vicinity south of Malabar Road, west of Brentwood Lakes Subdivision and Melbourne-Tillman Water Control District Canal 9R (136.70 acres) (Case FD-16-2022). (CONTINUED TO 09/06/22 P&Z AND 10/06/22 RCM)

12. Request by Paul Daly and Don Ballew for a Preliminary Development Plan to allow a proposed Planned Unit Development (PUD) for a residential townhome development to be known as ‘Lipscomb Street PUD’, which property is located east of and adjacent to Lipscomb Street, in the vicinity west of Mango Street (24.56 acres) (Case PD-32-2022). (CONTINUED TO 09/06/22 P&Z AND 10/06/22 RCM)

13. Request by the City of Palm Bay to amend the Code of Ordinances, Chapter 185, Zoning Code, Subchapter ‘Supplementary District Regulations’, to ensure compliance with current Florida statutes for mobile food vending (Case T-39-2022). (CONTINUED TO 09/06/22 P&Z AND 10/06/22 RCM)

14. Request by Malabar Holdings Group, LLC, for a Final Development Plan to allow a proposed Planned Unit Development (PUD) for a residential development to be known as ‘Malabar Springs Phase 1’, which property is located north of and adjacent to Malabar Road, in the vicinity west of St. Johns Heritage Parkway (259.17 acres) (Case FD-31-2022). (WITHDRAWN)

15. Request by Donald and Leeta Jordan to amend the City’s Comprehensive Plan Future Land Use Map to change the designated use of property located at the northeast corner of Madden Avenue and Sidney Street, from Single-Family Residential Use to Multiple-Family Residential Use (11.64 acres) (Case CP-28-2022). (WITHDRAWN)

16. Request by Donald and Leeta Jordan to rezone property located at the northeast corner of Madden Avenue and Sidney Street, from RS-2 (Single-Family

**Residential District) to RM-20 (Multiple-Family Residential District) (11.64 acres)
(Case CPZ-28-2022). (WITHDRAWN)**

CONSENT AGENDA:

All items of business under the 'Consent Agenda' heading were enacted by the following motion:

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, that the Consent Agenda be approved as presented with the removal of Items 6 and 13, from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

1. Adoption of Minutes: Meeting 2022-22; August 18, 2022.

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

2. Award of Bid: Culvert pipe replacement, Units 37 and 57 - IFB 57-0-2022 - Public Works Department (Timothy Rose Contracting, Inc. - \$385,860); budget increase (\$82,000).

Staff Recommendation: Approve the award for culvert pipe replacement, Units 37 and 57, with Timothy Rose Contracting, Inc. (Vero Beach), in the amount of \$385,859.75; and authorize an increase of \$82,000 for Project 22SU08, Unit 37 Pipe Replacement.

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

3. Contract: Road Bond paving, Kirby Industrial Park and Palm Bay Colony - IFB 64-0-2021, Change Order 5 - Public Works Department (Ranger Construction Industries - \$26,216).

Staff Recommendation: Approve Change Order 5 for the Kirby Industrial Park and Palm Bay Colony Road Bond paving with Ranger Construction Industries, in the amount of \$26,215.91.

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

4. Contract: South Regional Water Reclamation Facility construction - IFB 39-0-2020, Change Order 6 - Utilities Department (RJ Sullivan Corporation - \$1,049,999).

Staff Recommendation: Approve Change Order 6 for the South Regional Water Reclamation Facility construction project with RJ Sullivan Corporation, in the amount of \$1,049,998.75.

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

5. Contract: Relocation and force main design and permitting services, Lift Station 5 - TO 22-02-IS - Utilities Department (Infrastructure Solution Services - \$172,090).

Staff Recommendation: Approve Task Order 22-02-IS for Lift Station 5 relocation and force main design and permitting services with Infrastructure Solution Services, in the amount of \$172,090, against Master Agreement 36-0-2020.

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

6. Resolution 2022-43, providing for the acceptance of real property conveyed to the City by Palm Bay Greens, LLC, located at the intersection of Babcock Street and Port Malabar Boulevard.

The City Attorney read the resolution in caption only.

Bill Battin, resident, asked the purpose of the digital marquee. He said it could be a potential distraction for traffic. Ms. Sherman said it would increase communication with the community.

Motion by Deputy Mayor Johnson, seconded by Mr. Filiberto, to adopt Resolution 2022-43. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

7. Ordinance 2022-95, amending the Fiscal Year 2021-2022 budget by appropriating and allocating certain monies (fourth budget amendment), first reading.

The City Attorney read the ordinance in caption only.

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

8. Consideration of a budget amendment related to replacement of sewer main and appurtenances (Indian River Villas, Phase 1)(Utilities Department - \$66,090).

Staff Recommendation: Authorize a budget amendment allocating \$66,090 from Utilities Undesignated Fund Balance related to replacement of sewer main and appurtenances.

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

9. Consideration of a budget amendment related to oversizing of a water main (Sanibel Cove)(Utilities Department - \$53,321).

Staff Recommendation: Authorize a budget amendment allocating \$53,321 from Utilities Undesignated Fund Balance for the oversizing of a water main from 8-inch to 12-inch (Sanibel Cove).

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

10. Consideration of a budget amendment related to off-site water and wastewater improvements (Palm Vista Everlands)(Utilities Department - \$750,678).

Staff Recommendation: Authorize a budget amendment allocating \$750,678 from Utilities Undesignated Fund Balance for off-site water and wastewater improvements (Palm Vista Everlands).

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

11. Consideration of a budget amendment related to off-site water and wastewater improvements (St. Johns Preserve, Phase 1)(Utilities Department - \$126,828).

Staff Recommendation: Authorize a budget amendment allocating \$126,828 from Utilities Undesignated Fund Balance for off-site water and wastewater improvements (St. Johns Preserve, Phase 1).

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

12. Consideration of an Easement Agreement with Florida Power & Light for placement of electric utility facilities at 454 Cellini Avenue NE.

Staff Recommendation: Approve a non-exclusive easement agreement with Florida Power & Light for the placement of aboveground and underground electric utility facilities.

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

13. Consideration of a grant agreement with the Florida Department of Environmental Protection's Coastal Partnership Initiative for improvements to Castaway Point Park.

Staff Recommendation: Authorize the City Manager to execute the grant agreement with the Florida Department of Environmental Protection related to the Coastal Partnership Initiatives grant program for improvements to Castaway Point Park.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve the grant agreement. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

14. Consideration of an agreement with the Institute of Police Technology and Management for the Pedestrian and Bicycle Safety High Visibility Enforcement and Support Program.

Staff Recommendation: Authorize the City Manager to execute a subgrant agreement and contract with the University of North Florida's Institute of Police Technology and Management for the Pedestrian and Bicycle Safety High Visibility Enforcement and Support Program, to include any and all future amendments.

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

15. Consideration of travel and training for specified City employees (Police Department).

Staff Recommendation: Approve the travel and training as specified.

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

UNFINISHED AND OLD BUSINESS:

1. Appointment of one (1) member to the Community Development Advisory Board.

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to appoint Dawn Bittar to the 'Banking Industry' position on the Community Development Advisory Board. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

NEW BUSINESS:

1. Consideration of scheduling a special meeting for September 2022.

Council concurred to schedule a special Council meeting for Thursday, September 22, 2022, at 6:00 p.m., to review applications received to address homelessness, affordable housing, and related public services.

2. Consideration of City's co-sponsorship with Representative Randy Fine and Farm Share for free food distribution events. (AGENDA REVISION)

Staff Recommendation: Approve the City's co-sponsorship with Representative Fine and Farm Share to host the series of Free Food Distribution events; approve \$1,360 of in-kind wages and fee waivers.

Deputy Mayor asked that future requests be submitted in a timely fashion, especially due to comments from the audit. Mayor Medina felt elected officials should be given leniency on the policies and asked that the policy be reviewed. Mr. Felix agreed with Mayor Medina but said that Council had voted on a policy and it should be followed. Mr. Foster said the policy should be followed, regardless of the request being from another government agency. Deputy Mayor Johnson said the City should partner with Farm Share in the future, not just during election time.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve the co-sponsorship with Representative Randy Fine and Farm Share for free food distribution events and looking into partnering with Farm Share in the future. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

COUNCIL REPORTS:

Councilmembers addressed various subjects.

ADMINISTRATIVE AND LEGAL REPORTS:

1. Ms. Sherman made the following reports:

a. Received a request from Dr. Juan Avendano, Director of the Center for Advanced Manufacturing and Innovating Design at Florida Institute of Technology, for a letter of support for his U.S. residency. Council concurred but Deputy Mayor Johnson and Mr. Filiberto said they wanted to meet Dr. Avendano first.

b. Provided an update on inquiries received about Daily Bread relocating to Malabar Road. Ms. Sherman advised that no approvals had been granted by the City for a project related to Daily Bread. Requests for Proposals regarding the ARPA funding had been received by fourteen (14) agencies which would be considered at the special Council meeting to be held on September 22nd.

PUBLIC COMMENTS/RESPONSES:

Individuals made general comments.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 10:18 P.M.

Rob Medina, MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK