

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2022-31

Held on Thursday, the 20th day of October 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.

Reverend Steve Reeves, Cornerstone Assembly of God, 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 |
| CITY CLERK: | Terese Jones | Present |

CITY STAFF: Joan Junkala-Brown, Deputy City Manager; Fred Poppe, Recreation Director; Frank Watanabe, City Engineer.

ANNOUNCEMENTS:

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

- 1. One (1) vacancy on the Youth Advisory Board (represents 'at-large student member' position).++**
- 2. One (1) vacancy on the Community Development Advisory Board (represents one of the following positions: 'resident of the City'; 'actively engaged in home building'; 'residential home building'; or 'for-profit provider').++**
- 3. Two (2) terms expiring on the Citizens' Budget Advisory Board (represents 'at-large' positions).+**

AGENDA REVISIONS:

1. Ms. Sherman announced that the amount reflected under Item 6, Consent Agenda, would be adjusted and she would address same when the item was presented.

PROCLAMATION:

The proclamation was read.

1. **Hispanic Heritage Month - September 15-October 15, 2022; Puerto Rican Day - October 22, 2022.**

PUBLIC COMMENTS/RESPONSES: (Non-agenda Items Only)

Individuals made general comments.

1. Tim Bland, resident, encouraged the city to purchase the Majors Golf Course.
2. Jeremy Mears, Brownstone Group, was the developer for a proposed apartment complex in Palm Bay and the request for same was denied by City Council at the last meeting (Case Z-44-2022). He asked Council to reconsider the request as he had advised staff that he would make a \$200,000 donation towards the new fire station, but staff asked that he not present the donation to Council. He felt that the donation may have made a difference on the decision made by City Council. Mr. Mears asked that Council reconsider the item pursuant to Section 7.9.14, of Council's Policies and Procedures.

Council and staff responded to public comments at this time.

Councilmembers Foster and Felix felt that staff should research the possibility of purchasing the golf course. Deputy Mayor Johnson said he was not interested in pursuing the idea. Mr. Filiberto supported discussing the matter. Mr. Foster suggested a workshop. Council concurred.

Council questioned the \$200,000 donation as it was not included in the Staff Report when the item was presented to Council. Mr. Filiberto said the developer went to staff with an offer that Council may have considered yet staff disregarded this act of good faith towards a critical need of the city.

Motion by Mr. Filiberto, seconded by Mr. Foster, to reconsider the item at the next available hearing date. Ms. Smith explained that Council was only to review the

requests for the rezoning and comprehensive plan amendment, and not viewing acceptance of money as a means of approval of the requests. This would be considered contract zoning and the courts have ruled that a local government may not contract away its police powers. The only way to receive such funds was through a credit to the developer's impact fees. Ms. Smith cited Section 51.05 of the Code of Ordinances which stated that Council could reconsider the same or similar issue within the twelve (12) month period if a mistake, inadvertence, surprise or excusable neglect had occurred as a result of the actions of the applicant or the city. However, none of those instances were stated by Council and it would need to be identified in order to reconsider the items.

Mr. Filiberto said that Council did not ask for the money, and he did not feel there was anything egregious. He stood by his motion. Mr. Foster said he seconded the motion as he voted for it initially and because he felt it was good project regardless.

Mr. Felix said the City Attorney had made it clear and this discussion should not be taking place.

Mr. Foster withdrew his second to the motion and Mr. Filiberto withdrew his motion.

Mr. Filiberto asked for Council consensus to reconsider. Mayor Medina and Mr. Felix did not support the reconsideration. Deputy Mayor Johnson encouraged the applicant to speak with the Growth Management Department.

PUBLIC HEARINGS:

1. Consideration of a Development Agreement with Grapefruit Scuba, LLC, pertaining to the development of a small hobby farm.

The public hearing was opened. Ms. Sherman presented the request to Council.

Councilman Foster left the meeting at this time.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve the development agreement with Grapefruit Scuba, LLC, for the development of a small hobby farm. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

2. Ordinance 2022-101, granting approval of a Preliminary Development Plan for a proposed Regional Activity Center to be known at '3 Forks Mixed Use' in AU (Agricultural Residential) (Brevard County) and SR (Suburban Residential) (Brevard County) zoning, with a tentative zoning of RAC (Regional Activity Center District), which property is located south of and adjacent to Malabar Road, in the vicinity east of St. Johns Heritage Parkway and west of Melbourne-Tillman Water Control District Canal 8 (124.33 acres) (Case PD-26-2022, Parkside Commons Center, LLC, and West 80 Acres, LLC), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened.

Councilman Foster rejoined the meeting at this time.

Jake Wise, CEG Engineering 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 Ordinance 2022-101.

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 | Yea |

3. Ordinance 2022-102, granting approval of a Final Development Plan for a PUD (Planned Unit Development) zoning residential subdivision to be known as 'Chaparral Phases IV and V' on property located in the vicinity south of Malabar Road, west of Brentwood Lakes Subdivision and Melbourne-Tillman Water Control District Canal 9R (160.51 acres) (Case FD-16-2022, Chaparral Properties, LLC), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened. Jake Wise, CEG Engineering and representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to adopt Ordinance 2022-102.

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 |

4. Ordinance 2022-103, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapter ‘Supplementary District Regulations’, by modifying provisions related to mobile food vending (T-39-2022, City of Palm Bay), 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. Felix, to adopt Ordinance 2022-103. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

5. Ordinance 2022-107, rezoning property located west of and adjacent to Dixie Highway, in the vicinity north of Malabar Road, from HC (Highway Commercial District) to BMU (Bayfront Mixed Use District) (6.92 acres) (Case CPZ-32-2022, Florida Institute of Technology, Inc.), final reading. (Quasi-Judicial Proceeding)

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

Motion by Mr. Filiberto, seconded by Deputy Mayor Johnson, to adopt Ordinance 2022-107. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

6. Ordinance 2022-109, rezoning property located east of and adjacent to Browning Avenue, in the vicinity north of Malabar Road, from RC (Restricted

**Commercial District) to RS-2 (Single-Family Residential District) (0.23 acres)
(Case CPZ-33-2022, Henry Morin), final reading. (Quasi-Judicial Proceeding)**

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

Motion by Mr. Filiberto, seconded by Deputy Mayor Johnson, to adopt Ordinance 2022-109.

Motion carried with members voting as follows:

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

7. Ordinance 2022-111, rezoning property located between and adjacent to Deauville and Battersea Avenues, in the vicinity north of Malabar Road, from RC (Restricted Commercial District) to RS-2 (Single-Family Residential District) (0.46 acres) (Case CPZ-34-2022, John and Shirley Morin), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened. Henry Morin, representative for the applicants, presented the request to Council. The public hearing was closed.

Motion by Mr. Filiberto, seconded by Deputy Mayor Johnson, to adopt Ordinance 2022-111.

Motion carried with members voting as follows:

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

8. Ordinance 2022-113, granting approval of a Final Development Plan for a subdivision to be known as 'St. Johns Preserve - Tract A, Phase 1' on property located north of and adjacent to Malabar Road, west of and adjacent to St. Johns Heritage Parkway (19.12 acres) (Case FD-46-2022, St. Johns Preserve Investment Group, LLC), final reading. (Quasi-Judicial Proceeding)

The City Attorney read the ordinance in caption only. The public hearing was opened. Ana Saunders, BSE Consultants 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 Ordinance 2022-113. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

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 4, 5, 6, 7, 10 and 12, 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 2022-24; September 1, 2022.

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

2. Adoption of Minutes: Meeting 2022-26; September 15, 2022.

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

3. Miscellaneous: Storage tank repair, North Regional Wastewater Treatment Plant (emergency procurement and fund appropriation) – Utilities Department (CROM, LLC - \$139,510).

Staff Recommendation: Approve appropriation of funds on the next scheduled budget amendment in the amount of \$139,510; and approve the emergency procurement from CROM, LLC, dba CROM Coatings and Restorations, in the amount of \$139,510.

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

4. Consideration of City Council Flag Program nominee, Tom Gaume. (Councilman Foster)

Staff Recommendation: Approve Tom Gaume as a nominee for the City Council Flag Program.

Bill Battin, resident, did not agree with an individual's DD214 being included in the agenda packet.

Mayor Medina suggested that the form be reviewed by staff, but not be included in the packet.

Motion by Mr. Foster, seconded by Mr. Filiberto, to approve Tom Gaume as the City Council Flag Program nominee. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

5. Consideration of a Facility Use Agreement with Space Coast Light Festival Inc., for the Space Coast Light Festival at Fred Poppe Regional Park from November 18, 2022, thru January 1, 2023.

Staff Recommendation: Authorize the Facility Use Agreement with Space Coast Light Festival Inc.

Randall Olszewski, resident, felt that the residents between Minton Road and the St. Johns Heritage Parkway should be made aware of the festival relocating to Palm Bay.

Bill Battin, resident, said the Christmas Extravaganza would be held at the same time which would draw even more people for one day and questioned how a free event would be coordinated with the light festival.

Mr. Poppe said the Christmas Extravaganza would end at least two hours prior to the light festival so there would be no overlap in events.

Motion by Deputy Mayor Johnson, seconded by Mayor Medina, to approve the Facility Use Agreement with Space Coast Light Festival, Inc. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

6. Consideration of utilizing Stormwater Utility Funds to open a project and provide a budget for the replacement of the failed culvert pipes under Bass Pro Drive (\$172,000).

Staff Recommendation: Approve the use of Stormwater Utility Fund to provide a budget for Project 23SU12, Unit 60 Pipe Replacement.

Ms. Sherman presented the request to Council and advised that the amount would increase to \$220,000 due to an additional pipe that was close to failure that would need to be repaired.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to approve utilizing Stormwater Utility Funds as requested. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

7. Acknowledgement of the October 2022 GO Road Bond Paving report update.

Mr. Watanabe provided a status of the road paving projects.

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

8. Acknowledgement of the Semi-Annual Report of Formal Solicitations awarded by the Procurement Department from March 18, 2022, through October 6, 2022.

The item, considered under Consent Agenda, was acknowledged by City Council.

9. Acknowledgement of the City's monthly financial report for August 2022 (Unaudited).

The item, considered under Consent Agenda, was acknowledged by City Council.

10. Acknowledgement of the City's Co-Sponsorship Policy annual update.

Bill Battin, resident, felt that the organizations should contribute to the cost for manhours.

Mayor Medina felt that the Christmas Extravaganza was a stand-alone event, and the City should have a different partnership with the organization, not only because of its value to the community but that the event was completely free to the community.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to acknowledge the Co-Sponsorship Policy annual update. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Foster, Yea; Councilman Felix, Yea; Councilman Filiberto, Yea.

11. Consideration of travel and training for specified City employees (City Attorney's Office).

Staff Recommendation: Approve the travel and training as specified.

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

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

Bill Battin, resident, requested the ranking of the SWAT Team after the competition.

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

COMMITTEE AND COUNCIL REPORTS:

Councilmembers addressed various subject matters and provided updates on activities of agencies and boards on which they served as members.

1. Mayor Medina was invited to a conference for the National Association of Latino Elected Officials (NALEO) from November 16-18, 2022. He said it conflicted with the regular Council meeting on November 17th and asked if Council would consider rescheduling the meeting to Monday, November 21st; and if Council would agree to being a member of the organization. Council concurred. Deputy Mayor Johnson and Mr. Filiberto said they would not support rescheduling of meetings in the future.

2. Mr. Foster said he would bring forth recommendations to dissolve some of the City's advisory boards.

ADMINISTRATIVE AND LEGAL REPORTS:

1. Ms. Sherman made the following reports:

a. A workshop to discuss local preference would be scheduled for Tuesday, November 1st, at 6:00 P.M. Council concurred.

b. Staff was scheduling the strategic planning sessions for Council and had tentatively set the dates for half days in the afternoon of November 14th and the morning of November 15th. Council concurred to schedule the session all day on November 14th.

PUBLIC COMMENTS/RESPONSES:

Individuals made general comments.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 8:59 P.M.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK