

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2020-27

Held on Thursday, the 3rd day of September 2020, 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.

Pursuant to Section 286.011, Florida Statutes, and Executive Order 20-69, this public meeting was conducted via communications media technology (teleconference/video conference).

The meeting was called to order at the hour of 7:00 P.M.

Councilman Santiago gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

MAYOR:	William Capote	Present
DEPUTY MAYOR:	Kenny Johnson	Present
COUNCILMEMBER:	Harry Santiago, Jr.	Present
COUNCILMEMBER:	Jeff Bailey	Present
COUNCILMEMBER:	Brian Anderson	Present
ACTING CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
DEPUTY CITY CLERK:	Terri Lefler	Present

CITY STAFF: Present was Juliet Misconi, Chief Procurement Officer; Nelson Moya, Police Chief; Valentino Perez, Chief Building Official; Laurence Bradley, Growth Management Director.

ANNOUNCEMENT(S):

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

- 1. One (1) vacancy on the Community Development Advisory Board (can represent one of the following: 'for-profit provider', 'actively engaged in home building', 'employer within the City', or 'advocate for low income persons').++**

2. **Four (4) vacancies on the Disaster Relief Committee.++**
3. **One (1) term expiring on the Melbourne-Tillman Water Control District.++**
4. **One (1) vacancy on the Business Improvement District Board (represents 'bank or financial institution' position).+**

AGENDA REVISION(S):

1. Ms. Sherman advised that Item 4, under Consent Agenda, Resolution 2020-36 (designation of a segment of St. Johns Heritage Parkway as 'Andy Anderson Parkway'), was withdrawn by staff.
2. Ms. Smith announced that consideration of terminating the employment contract with Nicholas Tsamoutales, City Attorney Emeritus, was added to the agenda as Item 3, under New Business.

CONSENT AGENDA:

All items of business marked with an asterisk were considered under Consent Agenda and enacted by the following motion:

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, that the Consent Agenda be approved with the removal of Items 2 and 8, under Consent Agenda, from consent. Mr. Santiago asked if Council wanted to discuss Item 4, under Consent Agenda, even though it was withdrawn by staff. Mayor Capote suggested discussing under Council Reports. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

1. **Adoption of Minutes: Regular Council Meeting 2020-26; August 20, 2020.**

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

2. **Award of Bid (Procurement): Road bond paving, Port Malabar Boulevard improvements – IFB 68-0-2020 – Public Works Department (Ranger Construction Industries - \$1,219,108).**

Staff Recommendation: Approve the award for road bond paving, Port Malabar Boulevard improvements to Ranger Construction Industries (Ft. Pierce), in the amount of \$1,219,108.20.

Peter Filiberto, resident, questioned why local preference was not given. Mrs. Misconi explained that the Procurement Code allows for local preference between \$100,000 and \$1 million.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to award the bid as requested. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

3. Miscellaneous (Procurement): Clarifier repair and removal of biosolids, North Regional Wastewater Treatment Plant (emergency purchase) – Utilities Department (Evoqua Water Technologies - \$147,965 (parts and services); Synagro South LLC - \$344,111 (cleaning, dewatering and hauling services)); and appropriation of funds on next scheduled budget amendment (\$602,000).

Staff Recommendation: Approve the emergency purchases of parts and services, and the cleaning, dewatering and hauling services for the clarifier repair and removal of biosolids for the North Regional Wastewater Treatment Plant with Evoqua Water Technologies in the amount of \$147,964.70, and Synagro South LLC in the amount of \$344,111, respectively; and approve the appropriation of funds on the next scheduled budget amendment in the amount of \$602,000.

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

4. Resolution 2020-36, supporting the designation of a segment of St. Johns Heritage Parkway, from the intersection of US 192 south to Malabar Road, as 'Andy Anderson Parkway'. (Withdrawn) (Agenda Revision)

The item, announced under Agenda Revisions, was withdrawn by City staff.

5. Ordinance 2020-55, amending the Code of Ordinances, Chapter 92, Noise, by repealing the chapter in its entirety, first reading.

The City Attorney read the ordinance in caption only.

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

6. Ordinance 2020-56, amending the Code of Ordinances, by creating Chapter 92, to be titled "Noise", first reading.

The City Attorney read the ordinance in caption only.

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

7. Ordinance 2020-57, amending the Fiscal Year 2019-2020 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 allocation of funding for capital asset needs.

Staff Recommendation: Approve the allocation of \$1,380,773 in excess funding prior years allocation from the Risk Management Fund, and \$500,000 in unexpended Fiscal Year 2020 funding (if available) for Fiscal Year 2021 capital purchases.

Bill Battin, resident, said the City's size had increased by twenty percent (20%) due to annexations. He said there was already a shortfall in Police and Fire Departments for vehicles, and Parks and Recreation for maintenance. Ms. Sherman advised that in the proposed budget for next fiscal year, there were no funding requests for capital needs. Those needs were being addressed partially through this allocation of returned Risk Management Funds due to a build-up of reserves being placed into the General Fund.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to approve the allocation as requested.

Mr. Bailey questioned why the request included numerous unmarked police vehicles. Chief Moya answered that the vehicles were assigned to detectives. Mr. Bailey asked the number of detectives in the department. Chief Moya advised that there were approximately fifteen (15) detectives. Mr. Bailey felt these were appropriate ways to spend the reserves.

Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

9. Consideration of travel and training for specified City employee (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.

PRESENTATION(S):

1. Christopher Little, Utilities Director - Water and Wastewater Financial Sustainability Analysis and Capital Charges Study. Jeff Dykstra, City's consultant with Stantec, provided an overview of the analysis and study. The project scope was to update the Utility's financial management plan and rate indexing to meet costs; perform a local residential bill comparison; and update the water and sewer capital charges (impact fees). Recommendations included a two percent (2%) water and two and a half percent (2.5%) wastewater/reclaimed water rate increase for Fiscal Year 2021; with a proposed four percent (4%) water and five percent (5%) wastewater/reclaimed water annual rate indexing plan starting in Fiscal Year 2022.

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

Individuals made general comments.

PUBLIC HEARING(S):

1. Ordinance 2020-51, vacating a portion of the rear public utility and drainage easement located within Lots 21 and 22, Block 65, Port Malabar Unit 4 (Case VE-9-2020, Alan Flandreau), final reading.

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

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to adopt Ordinance 2020-51. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

2. Ordinance 2020-53, vacating a portion of the rear public utility and drainage easement located within Lot 33, Block 2018, Port Malabar Unit 46 (Case VE-11-2020, Steven Brown), final reading.

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 Deputy Mayor Johnson, seconded by Mr. Bailey, to adopt Ordinance 2020-53. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

3. Ordinance 2020-54, amending the Code of Ordinances, Chapter 30, City Manager, by revising provisions related to filling a vacancy in the Office of the City Manager, final reading. (Councilman Bailey)

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

Bill Battin, resident, said he understood the purpose of the request, but felt that the current Council should make the decision on the City Manager. He added that Council should consider postponing the final development plan request for Emerald Lakes until after the election.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to adopt Ordinance 2020-54. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

4. Ordinance 2020-52, vacating a portion of the rear public utility and drainage easement located within Lot 35, Block 2745, Port Malabar Unit 50 (Case VE-10-2020, Brian and Joellyn Daniels), first reading. (CONTINUED FROM RCM – 08/20/20)

Staff recommended approval of the request per the Analysis Section of the Staff Report.

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 Deputy Mayor Johnson, seconded by Mr. Santiago, to approve Ordinance 2020-52. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

5. Ordinance 2020-58, amending the Code of Ordinances, Chapter 170, Construction Codes and Regulations, Subchapter 'Building Code', by eliminating the requirement for a building permit for accessory structures 400 square feet or

less in residential districts accessory to single-family dwellings and revising provisions contained therein (Case T-20-2020, City of Palm Bay), first reading.

The Planning and Zoning Board (P&Z) recommended that the request be denied.

The City Attorney read the ordinance in caption only. The public hearing was opened. Councilman Bailey presented the item to Council. He said that staff had concerns with the four hundred (400) square foot size as that was the highest amount permitted and proposed a limit of one hundred twenty (120) square feet or less.

Mr. Perez explained that four hundred (400) square feet was excessive compared to other municipalities. He said the Building Officials Association recommended an exemption up to two hundred twenty (220) square feet. He felt that a maximum of one hundred twenty (120) square feet was in line with other municipalities throughout the state.

David Karaffa, resident, supported the request and asked for clarification on staff's comment that "enforcement would be difficult". He said that staff could keep track of structures when plans are brought in for staff review.

Phil Weinberg, resident, submitted a virtual comment. He said that the permits should not be waived as it ensured that the structures were meeting the minimal standards for construction and installation.

Leeta Jordan, resident and member of P&Z, stated that P&Z had denied the request. She said regulations were necessary and this ordinance eliminated those regulations.

Mr. Santiago asked how a structure would be recorded for tax purposes if built on a permanent foundation. Mr. Valentino advised that a zoning review would still be required for setbacks and other requirements and only the building permit would be exempt. If utilities or electric were installed in the unit, a permit would be required.

Mr. Bailey asked if a permit was required if a structure was erected on a slab and was one hundred twenty (120) square feet or less. Mr. Valentino answered that it would be exempt from the permit requirement as it was within the square footage.

Mr. Santiago asked if P&Z's recommended denial was for four hundred (400) square feet or one hundred twenty (120) square feet. Mr. Valentino confirmed that the denial was for the four hundred (400) square feet. Mr. Bradley clarified that the option of one hundred twenty (120) square feet was not presented to P&Z. Mr. Santiago asked if staff was comfortable with one hundred twenty (120) square feet. Mr. Bradley said he agreed with the square footage as the Building Officials Association supported same.

The public hearing was closed.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to approve Ordinance 2020-58, with the amendment of four hundred (400) square feet to one hundred twenty (120) square feet.

Mr. Bailey said he agreed with the revision as staff was comfortable with the square footage. However, he preferred more square footage. Deputy Mayor Johnson said he would not have supported the higher square footage. Mr. Santiago wanted a recommendation from P&Z for the one hundred twenty (120) square feet. Mr. Anderson felt it should be considered by P&Z. Mayor Capote initially felt it should be revised by P&Z, but he was okay with Council's approval.

Deputy Mayor Johnson withdrew his second to the motion.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to table the item to the October 15, 2020, regular Council meeting, with P&Z considering the item at its meeting on October 7, 2020. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

6. Resolution 2020-37, granting approval of a final development plan for a Regional Activity Center to allow for a proposed mixed-use development to be known as 'Emerald Lakes West Phase II' in RAC (Regional Activity Center District) zoning on property located west of and adjacent to Interstate 95, on the north and south sides of the St. Johns Heritage Parkway (829.27 acres) (FD-19-2020, Emerald Investment Holdings, LLC) (Quasi-Judicial Proceeding).

The Planning and Zoning Board recommended that the request be approved, subject to the items contained in the Staff Report.

The City Attorney read the resolution in caption only. The public hearing was opened. Jake Wise, representative for the applicant, presented the request to Council. Paul Paluzzi, of Zons Development, and Brenda Yates, presented videos of the project.

Mr. Santiago said that a previous project approved by Council known as Emerald City never came to fruition. He asked if this project was definitely going to be developed. Mr. Paluzzi, Zons Development, confirmed same. Mr. Bailey asked when Crystal Lagoon would be open to the public. Mr. Paluzzi answered it would open at the same time it would open for the residents in the area, approximately 14-18 months. Mr. Paluzzi and Ms. Yates responded to Council's questions related to the project.

Mr. Bailey asked about the stormwater. Ms. Yates said that the applicant would be taking care of the roads, street lighting, irrigation and stormwater, and parks within the community. It was all part of the development's maintenance and obligations and the City would not be responsible for same. She advised of impact fees to be paid to the City.

Bill Battin, resident, commented on several aspects of the project. He did not agree with language in the Staff Report that the developer *will* enter into an agreement and *shall* execute an agreement. He said that in the past, other developers said they would enter into agreements and it was never done. He preferred to see the agreements prior to final approval. He asked if impact fees had to stay within that area and expressed concern about golf carts crossing the St. Johns Heritage Parkway.

Mr. Bailey asked if it was legally permissible to table this item and get the agreements prior to Council consideration. Ms. Smith said that the development and utility agreements were not a condition of approval, but not having those agreements could be used to prohibit the release of building permits.

The public hearing was closed.

Motion by Mr. Anderson, seconded by Mr. Santiago, to adopt Resolution 2020-37. Councilmembers expressed their support of the project. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

7. Request by Troy Holdings, LLC for a variance to allow a proposed building to encroach 13 feet, 4 inches into the 30-foot rear setback and 24 feet into the 30-foot rear parking setback; and to allow a 21-foot reduction in the minimum distance requirement between Malabar Road and the driveway proposed at Deauville Street (0.31 acres) (V-17-2020) (Quasi-Judicial Proceeding).

The Planning and Zoning Board recommended that the request be approved, subject to the items contained in the Staff Report.

The public hearing was opened. Paul Hayhurst, representative for the applicant, presented the request to Council. The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve the request.

As a virtual comment had to be heard, the public hearing was reopened.

Daniel Biro, resident, submitted a virtual comment. He owned two (2) vacant lots directly

across the street from the applicant. He asked that Council ensure that approval of the variance would not force or limit the location of a driveway on his property as it would then limit/decrease the currently allowable size of a structure which could be approved on his property. Mr. Biro said it would cause a decrease in the value of his vacant property and/or make it unbuildable/worthless.

Mr. Bailey asked staff to address Mr. Biro's concerns and questions. Mr. Bradley said he had a conversation with Mr. Biro earlier in the day. He said that the City adopted the State's requirements for driveway distances from major roads. Mr. Biro's property was conforming but was also undersized. Mr. Bradley did not see where the variance would have a negative impact on Mr. Biro's property.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve the request. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

8. Request by Philip and Patricia Hatcher for a variance to allow a proposed pool and screen enclosure to encroach 18.5 feet into the 25-foot mean high water line setback from the Indian River and 1.5 feet into the 6-foot side accessory structure setback; and to allow an existing air conditioner unit to encroach 3 feet into the 25-foot mean high water line setback from the Indian River (0.31 acres) (V-18-2020) (Quasi-Judicial Proceeding).

The Planning and Zoning Board recommended that the request be approved, subject to the items contained in the Staff Report.

The public hearing was opened. The applicant presented the request to Council. The public hearing was closed.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to approve the request. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

UNFINISHED AND OLD BUSINESS:

1. Appointment of one (1) adult member to the Youth Advisory Board.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to appoint Jaclyn Bounaito to the 'adult member' position on the Youth Advisory Board. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

2. Appointment of one (1) member to the Citizens' Budget Advisory Board.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to appoint Chris Seibert to the Citizens' Budget Advisory Board. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

COUNCIL REPORTS:

Councilmembers addressed various subject matters.

1. Mr. Anderson asked staff to explain the information being distributed to residents regarding solid waste services with Republic.

Ms. Sherman advised that the new contract would commence on October 1, 2020. Within the next week, residents would receive information via mail. The first postcard would be sent to those who currently paid for extra carts. The delivery of new carts would not occur until January or February 2021. She said that every resident would receive a brochure with information about how to select a cart size as three (3) options would be available. Information would also be posted on the City's website and through social media.

2. Mr. Bailey requested a workshop regarding the Joint Legislative Auditing Committee's (JLAC) audit of the City. He wanted to review the items that had been addressed by staff. Mayor Capote asked that it be addressed under Item 2, New Business.

3. Mr. Santiago asked if Council would reconsider Item 4, under Consent (Resolution 2020-36) and approve it within the City's limits. Mr. Anderson suggested designating the roadway versus renaming. He felt that portion of the St. Johns Heritage Parkway within the City could be recognized as such. Mayor Capote, Deputy Mayor Johnson and Councilman Bailey would not support the request at this time.

NEW BUSINESS:

1. Consideration of allocation of Fiscal Year-End unspent funds to the Road Maintenance Fund.

Staff Recommendation: Approve the allocation of fifty percent (50%) of the unexpended Fiscal Year 2020 funds into the Road Maintenance Fund.

Ms. Sherman explained that at the last budget workshop, one of the options presented to Council was to reallocate all or part of the Fiscal Year 2019-2020 year-end available funding into the Road Maintenance Fund. Current year-end unexpended projections ranged between \$1-\$2 million that may be returned to Fund Balance.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve the allocation as requested.

Mr. Bailey preferred that all of the funds be placed into the Road Maintenance Fund and that the \$500,000 proposed for capital purchases be taken from reserves. Ms. Sherman said Council had approved the allocation of the \$500,000 under Item 8, Consent.

Mr. Bailey withdrew his second to the motion.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve the allocation of one hundred percent (100%) of the unexpended Fiscal Year 2020 funds into the Road Maintenance Fund, and \$500,000 proposed for capital purchases to be taken from reserves. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

2. Consideration of scheduling a workshop for September 2020.

Council concurred to schedule the following:

a) Special Council meeting on Wednesday, September 16, 2020, at 6:00 P.M., to consider an administrative appeal of a minor subdivision (Plantation Circle) submitted by Ken Smith;

b) Workshop on Tuesday, September 22, 2020, at 6:00 P.M., to discuss the procurement ordinance; and

c) Workshop as requested by Councilman Bailey on Thursday, October 1, 2020, at 6:00 P.M., for a JLAC audit update. Mayor Capote did not agree with having the workshop prior to the regular meeting. He preferred a standalone workshop. Mr. Bailey suggested mid-October. Council concurred.

3. Consideration of terminating the employment contract with Nicholas Tsamoutales, City Attorney Emeritus. (Councilman Bailey) (Agenda Revision)

Staff Recommendation: Terminate the employment contract without cause and provide twenty (20) weeks' severance.

Councilman Bailey presented the request to Council. He said that this was one of the items from the JLAC audit and the City was paying a contract for an employee that was no longer providing services to the City.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to terminate the employment contract without cause and provide twenty (20) weeks' severance. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

ADMINISTRATIVE AND LEGAL REPORTS:

There were no reports.

PUBLIC COMMENTS/RESPONSES:

A resident made a general comment.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 10:00 p.m.

William Capote, MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK