

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2020-39

Held on Thursday, the 5th day of November 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.

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

Pastor Rob Medina 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 Chris Little, Utilities Director, Frank Watanabe, Public Works Director; Laurence Bradley, Growth Management Director; Joan Junkala-Brown, Community Planning and Economic Development Director.

ANNOUNCEMENT(S):

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

- 1. Three (3) vacancies on the Disaster Relief Committee.++**
- 2. One (1) vacancy on the Business Improvement District Board (represents 'bank or financial institution' position).++**
- 3. One (1) vacancy on the Youth Advisory Board (represents 'at-large student member' position).++**

AGENDA REVISION(S):

1. Ms. Sherman requested that Item 10, under Public Hearings, be considered as the first item under Public Hearings. Council concurred.

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. Bailey, that the Consent Agenda be approved with the removal of Items 8, 9, 10, 11, 13, and 14, from consent. 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 2020-34; October 1, 2020.

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

2. Adoption of Minutes: Special Council Meeting 2020-35; October 6, 2020.

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

3. Adoption of Minutes: Special Council Meeting 2020-37; October 22, 2020.

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

4. Contract: Software maintenance and support renewal, Superior NaviLine/HTE, and Click2Gov Public Administration – Information Technologies Department (Central Square (dba Superior) - \$134,973).

Staff Recommendation: Approve up to \$134,973 to Central Square (dba Superior) for software maintenance and support.

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

5. Miscellaneous: Tools, equipment, and bunker gear (Lake County contracts) – Fire Department (Ten-8 Fire Equipment Co., Municipal Emergency Services, and Municipal Equipment Co., Inc. – estimated \$150,000).

Staff Recommendation: Approve the cooperative purchase, utilizing the Lake County contracts, for the purchase of tools, equipment and bunker gear for the Fire Rescue Department from Ten-8 Fire Equipment Co., Municipal Emergency Services, and Municipal Equipment Co., Inc., in the estimated amount of \$150,000.

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

6. Resolution 2020-54, adopting the 2020 update of the Brevard Prepares Local Hazard Mitigation Strategy (LMS) Plan.

The City Attorney read the resolution in caption only.

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

7. Resolution 2020-55, amending the Procurement Manual by repealing Local Price Preference and Points for Location.

The City Attorney read the resolution in caption only.

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

8. Ordinance 2020-76, amending the Code of Ordinances, Chapter 62, Road Maintenance District, by repealing the chapter in its entirety, first reading.

The City Attorney read the ordinance in caption only.

Bill Battin, resident, asked how the ordinance was ever implemented if it was illegal. Ms. Smith responded that the concept was not illegal. The issue was that the District could not be comprised of all lands within the corporate limits of the City. The area had to be more focused in order to meet the criteria of a special benefit.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to approve Ordinance 2020-76. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

9. Ordinance 2020-77, amending the Code of Ordinances, Chapter 184, Subdivisions, by removing the requirement for recordation of the subdivision plat prior to issuance of building permits for model homes and developer owner/building homes, first reading.

The City Attorney read the ordinance in caption only.

Bill Battin, resident, expressed concern that the model homes were not just being built within the developments, but all over the City to represent the proposed developments. Ms. Sherman said the ordinance applied to subdivisions and not the model homes built sporadically throughout the City.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve Ordinance 2020-77. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

10. Ordinance 2020-78, amending the Fiscal Year 2019-2020 budget by appropriating and allocating certain monies (fifth budget amendment), first reading.

The City Attorney read the ordinance in caption only.

Bill Battin, resident, said he was under the impression that the drainage easements related to the I-95 Interchange had been pre-paid and completed. Ms. Sherman advised that the Public Works Director was not immediately available in Council Chambers due to social distancing requirements.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to table the item until the arrival of Public Works Director. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

Note: The item was considered after Item 14, under Consent Agenda.

11. Consideration of a grant agreement with Florida Department of Emergency Management for the Hazard Mitigation Grant Program for Cimarron Circle acquisition and demolition.

Staff Recommendation: Approve the grant agreement with the Florida Department of Emergency Management and authorize the City Manager to execute the grant agreement.

Bill Battin, resident, questioned how it was proposed that the taxpayers would pay for poor planning which caused the flooding of these properties. He hoped that elevations and proper drainage were being addressed prior to building any structures. Ms. Sherman advised that the thirteen (13) older homes had suffered repetitive losses due to storm events over the years. The homes were in a high flood zone area of the City.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to approve the grant agreement.

Mr. Santiago said the City did not have a proper stormwater management plan until recently and felt it was making a big difference in addressing flood issues.

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

12. Consideration of a non-exclusive easement request from Florida Power and Light for existing, and the extension of, overhead power lines and poles at Liberty Park for the Gulfport Key Subdivision.

Staff Recommendation: Approve the Florida Power and Light non-exclusive easement request for existing, and the extension of, overhead power lines and poles at Liberty Park for the Gulfport Key Subdivision.

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

13. Consideration of the appropriation of funds for engineering services for Pace Drive water main looping (\$275,000).

Staff Recommendation: Approve the appropriation of funds for engineering services for Pace Drive water main looping, in the amount of \$275,000.

Bill Battin, resident, asked if the development could be completed if the loop was not approved. Mr. Little said if the developer did not have the loop, they would use approximately 34,000 gallons of water per day under the current system. The loop would provide adequate pressure.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve the appropriation of funds 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.

14. Consideration of utilizing unspent contingency for improvements at the Palm Bay Aquatic Center (\$65,112).

Staff Recommendation: Approve the use of the unspent contingency fund for additional improvements at the Palm Bay Aquatic Center, in the amount of \$65,112.48.

Mr. Bailey understood the need to fix the pool, but now there were additional costs that were not mentioned at the beginning of the process to repair the pool. He said if there were items that had to be addressed due to safety, he agreed with those repairs. He asked if there were any items on the list that could wait until consideration by the new Council. Ms. Sherman advised of the following additional improvements: starting blocks (\$10,500); netting for slide (\$2,400); soffit (\$3,500); gutters and down spouts (\$8,400); indoor and outdoor LED lighting (\$13,300); and an events pavilion (\$27,000).

Deputy Mayor Johnson was okay with the request, with the removal of the events pavilion. Mr. Anderson felt it should all be fixed at one time.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to approve the request, with the removal of the events pavilion.

Mayor Capote felt the pavilion was important as there was nowhere for people to gather if they had an event. He said it should be attractive for the users and there was no point in having a brand new pool when everything around it was falling apart. Mr. Anderson felt this was a showpiece and swimming was a top-notch sport. The City needed to have a great facility to offer. Mr. Santiago felt the aquatic center was a regional draw and the events pavilion was vital. Mr. Bailey said the additional projects were not included from the beginning, they were not a safety issue, and the projects would happen in the future anyway. He felt the funding should come out the Parks and Recreation budget, not the General Fund.

Deputy Mayor Johnson asked what ultra-violet coverings or protections were available at the pool. Ms. Sherman said there were umbrella structures and lounge chairs for seating. The pavilion would be an additional amenity for parties and such.

Deputy Mayor Johnson withdrew his second to the motion. The motion died for lack of a second.

Motion by Deputy Mayor Johnson, seconded by Mr. Anderson, to approve utilizing unspent contingency fund for improvements at the Palm Bay Aquatic Center.

Mr. Bailey reiterated his comments and felt the costs should have been provided up front.

Mr. Anderson was disappointed that it took this long to reopen the pool and that these additional costs were not known but felt that everything should be done at one time. He said it was an investment in the City.

Mr. Bailey said the pool was typically at capacity and did not feel there would be more use out of the pool with the addition of the pavilion. He asked if there would be any hanging soffit. Ms. Sherman answered in the negative.

Motion carried with members voting as follows:

Mayor Capote	Yea
Deputy Mayor Johnson	Yea
Councilman Santiago	Yea
Councilman Bailey	Nay
Councilman Anderson	Yea

Council concurred to consider Item 10, under Consent Agenda, at this time.

10. Ordinance 2020-78, amending the Fiscal Year 2019-2020 budget by appropriating and allocating certain monies (fifth budget amendment), first reading.

In response to the public comment, Ms. Sherman clarified that the funding was not for a drainage easement, but for the construction costs for a stormwater system drainage pipe related to the roadway. It was a contractual obligation to complete the installation of the pipe.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, approve Ordinance 2020-78.

Mr. Bailey felt there were other options that would have had the developers pay for that portion of the St. John's Heritage Parkway at a much lower cost. He supported the request only because the road had to be completed.

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

Council resumed consideration of items in the order as shown on the agenda.

RECOGNITIONS AND PROCLAMATIONS:

1. Recognizing residents for assistance and support of the bond referendum for road improvements. (Councilman Anderson)

Councilman Anderson recognized the residents.

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

1. Randy Foster thanked the residents for voting him into office.

PUBLIC HEARING(S):

Council concurred to consider Item 10, under Public Hearings, at this time.

10. Resolution 2020-56, granting a conditional use to allow for an automotive fuel dispensary in LI (Light Industrial and Warehousing District) zoning on property located in the vicinity east of Northview street and north of Robert J. Conlan Boulevard (3.41 acres) (Case CU-23-2020, Republic Services of Florida, LP) (Quasi-Judicial Proceeding).

The Planning and Zoning Board recommended that the request be approved, subject to an eight (8) foot high opaque fence being erected along the west and north property lines and the relocation of the fuel tank onsite, according to approved staff location.

The City Attorney read the resolution in caption only. The public hearing was opened. Jake Wise, Construction Engineering Group, LLC, and representative for the applicant, presented the request to Council.

Deputy Mayor Johnson asked the maximum radius if there was a leak or explosion. George Sherman, Environmental Manager for Republic Services (Republic), advised that diesel was combustible liquid, and unlike gasoline, it would not explode. He said it was very safe and Republic never had a release from any of their twelve (12) tanks across the state. Mr. Sherman said if there was any leakage, it was detected quickly and contained. Deputy Mayor Johnson asked if it was common for Council to vote on the request first before going to Brevard County. Mr. Wise said there was a permit application through the State and Brevard County for the tank itself once the conditional use was approved by City Council.

Mr. Santiago asked about the piece of land to the east and if there were confirmed wetlands. Mr. Wise said it did not appear to be wetlands, but the tanks were moved as far south and east as possible. The tank would be secured behind a locked gate.

Mr. Bailey asked the safeguards used by the applicant versus City requirements. Mr. Watanabe said the City had aboveground tanks and they were standard and safe. Mr. Wise said that the aboveground tanks were safer as they were easier to inspect than underground tanks.

Mr. Santiago asked what actions Republic had in place to address spillage. Mr. Sherman answered that the tank storage was required to have a spill kit. Mr. Santiago asked how often a spillage occurred. Mr. Sherman said there were minor spills that were cleaned up very quickly, but there had been no major spills since his employment three years ago. Mr. Santiago asked about spills prior to his employment. Mr. Sherman said he would have to gather that information.

Mr. Bailey asked about tank inspections. Mr. Sherman said Republic had a Spill Prevention and Contingency Plan, which required monthly inspections pursuant to regulation. The inspections were documented and reviewed annually by the Florida Department of Environmental Protection (DEP).

Mr. Anderson asked Republic's backup plan if Council did not approve the conditional use. Mr. Sherman said either local gas stations or a mobile refueler would be utilized. Mobile refueling would be done after operating hours as the trucks typically had enough fuel to last throughout the day.

Mayor Capote advised that mobile refuelers were at greater risk of spills. Mr. Sherman confirmed same. Mr. Anderson asked who would be refueling the trucks. Mr. Sherman answered that it would be driver operators. Mr. Anderson asked if the drivers received any type of training to address spills. Mr. Sherman said there was an annual training requirement.

Deputy Mayor Johnson asked if any complaints had been received regarding Republic trucks at the gas stations. Ms. Sherman said she was unaware of any complaints.

Numerous individuals spoke against the request, which included the following reasons: residents were not notified that Republic would be at the site; increased traffic due to the trucks backing up on Robert J. Conlan Boulevard; tank would be located near the railroad track and FAR Chemical; resident safety; excessive noise; proximity to residential area; and contamination to the Indian River Lagoon (IRL) and wetlands. It was asked that the item be tabled for consideration by new Council.

Phil Weinberg, Chairman of the Planning and Zoning Board, clarified that if the conditional use was denied by Council, fuel could not be dispensed on the site by any means.

Mr. Bailey asked if the item could be continued until new Council was in office. Ms. Smith said that if additional information was need that was not available at this hearing, then Council could continue the item. However, as current Council had already started the quasi-judicial hearing process, it should not be continued just to allow the new

governmental body to hear the case, unless it was at the applicant's request.

Mr. Bailey asked about the mobile refueler. Mr. Bradley explained the conditional use pursuant to Section 185.45 of the City's Code. If the conditional use was denied, then dispensing or storing fuel would be in violation of the Code.

Mr. Wise responded to the public comments: there was a large distance between the site and railroad; safety protocols were in place concerning the IRL; and diesel fuel itself was not flammable. He said he was unaware that mobile fueling was prohibited until tonight, so the only option would be for the trucks to refuel at public gas stations. Mr. Wise said it was critical to Republic's functions to have a tank on site, so he did not agree with continuing the item.

Mr. Bailey asked about the vapor and the stack that released the vapor. Mr. Sherman said it was combustible and the vapor release was limited like gas station. Mr. Wise said he had visited the Public Works fuel site which had similar tanks to the request and he never smelled anything. Mr. Bailey asked if the conditional use ran with the property or if it could have a sunset date. Mr. Bradley said the use was for the specific applicant who made the request. If the property changed hands, the conditional use would not apply. Mr. Wise said the applicant would agree if Council added a condition that the conditional use expire at the end of contract.

Mr. Anderson asked if Republic would be willing to relocate to another site. Mr. Sherman said Republic made a commitment to lease the property and develop the property for the use.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Anderson, to deny Resolution 2020-56, based on Item G of the Staff Report which states, "The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity."

Deputy Mayor Johnson said there was not enough evidence provided to support Item G. Mr. Anderson felt the basis for denial was good but cautioned that Republic would have to utilize the local gas stations throughout the City which limited what they could do as a company.

Mr. Bailey expressed concern about the fumes and that the site was not surrounded solely by industrial. He noted that staff said that was safe but felt Item G would be defensible.

Mayor Capote said that Council would be limiting the applicant from doing their job. He said that the location was a private deal between Republic and property owner and the City did not regulate where Republic desired to place its facility.

Mr. Bailey said the applicant should have had this plan in place before they signed a 10-year contract. He felt Council was between a rock and hard place because the applicant needed approval in order to get their job done.

Deputy Mayor Johnson read the third paragraph under Item G of the Staff Report, which stated that as the site was close to existing residential properties, staff suggested that the tank be moved to the south side of the building located on the east side of the parking area. This would allow the existing 10,000 square foot building on the west side of the parking area to serve as a physical buffer in both sound and visual effect. Deputy Mayor Johnson said that the comment did not include fumes or odors.

Mr. Santiago reiterated the procedures of a quasi-judicial hearing. He said that Council's decision was based on fact, not emotion. He said the applicant had met most of the criteria in the Staff Report and agreed that Item G was a good reason to deny the request. However, he questioned the repercussion of the denial for Republic. Mr. Santiago wanted to know the history of major leakages during the entire existence of Republic and asked if that was reason enough to continue the hearing. Ms. Smith said that the public hearing had been closed and continuation to a new Council was ill-advised.

Mr. Anderson withdrew his second to the motion. Deputy Mayor Johnson withdrew his motion.

Motion by Mr. Santiago, seconded by Mr. Anderson, to continue Resolution 2020-56 to the November 19, 2020, regular Council meeting in order to receive further information on the leakage, fumes and the history of leakages during the existence of Republic Services. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

Council resumed the consideration of items in the order as shown on the agenda.

1. Ordinance 2020-67, amending the Code of Ordinances, Chapter 185, Zoning Code, Subchapters 'General Provisions' and 'Planned Unit Development (PUD)', by establishing language that will permit tiny homes on wheels and revising provisions contained therein (Case T-21-2020, City of Palm Bay), final reading. (Deputy Mayor Johnson)

The City Attorney read the ordinance in caption only. The public hearing was opened. Mr. Bradley advised of revisions to Section 185.062(D) pursuant to discussions at the last regular Council meeting. Ms. Smith explained that connecting tiny homes on wheels (THOW) to the utilities system was not related to septic and density. By connecting to the system, THOW would be considered residential. If they were not connected to the system, THOW could not be permitted within the PUD zoning category.

Mr. Bailey was pleased with the new wording. He recalled a condition in which once the land was platted, the owner of the land and the THOW had to be the same person. He asked how that condition could be implemented. Mr. Bradley said he had contacted the Brevard County Property Appraiser's Office who confirmed that if the THOW was affixed to the ground and connected to utilities, it could be taxed as real property, provided that the owner of the THOW was also the titled owner of land. He said that zoning did not regulate the form of ownership. Mr. Bailey wanted to ensure that portions of the land were not leased to THOW owners that would thereby create a trailer park. He asked how the architectural requirements should be addressed. Mr. Bradley said that the architectural standards were typically handled through the zoning process or as conditions of the PUD.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to adopt Ordinance 2020-67.

Deputy Mayor Johnson said that the THOW had to meet the requirements of the American National Standards Institute, as well as U.S. Department of Housing and Urban Development (HUD).

Mr. Bailey reiterated his concern of not allowing these types of PUDs to turn into mini trailer parks but felt staff had addressed the utilities issue and the implementation of conditions when it was necessary.

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

Mr. Bailey left the meeting at this time.

2. Ordinance 2020-71, amending the Code of Ordinances, Chapter 38, Procurement, by repealing Section 38.18, Local Business Price Preference, in its entirety, 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. Anderson, to adopt Ordinance 2020-71. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Anderson, Yea.

3. Ordinance 2020-72, amending the Code of Ordinances, Chapter 38, Procurement, by modifying provisions contained therein, final reading.

Mr. Bailey rejoined the meeting at this time.

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. Anderson, to adopt Ordinance 2020-72. 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 2020-73, vacating a portion of the rear public utility and drainage easement located within Lot 13, Block 407, Port Malabar Unit 10 (Case VE-13-2020, Brian Murphy), 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 Mr. Bailey, seconded by Deputy Mayor Johnson, to adopt Ordinance 2020-73. 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 2020-74, vacating a portion of the rear public utility and drainage easement located within Lot 7, Block 1677, Port Malabar Unit 37 (Case VE-14-2020, Carmen Torres), final reading.

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

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to adopt Ordinance 2020-74. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy

Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

6. Ordinance 2020-75, amending the Code of Ordinances, Chapter 34, Human Resources, Subchapter 'Whistle-Blower's Ordinance', by including definitions and providing provisions for disclosure of information and investigation procedures and referral of complaints alleging retaliation to the Department of Administrative Hearings, 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. Bailey, to adopt Ordinance 2020-75. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

7. Ordinance 2020-79, amending the Code of Ordinances, Chapter 171, Fair Share Impact Fees, Subchapter 'Water and Wastewater Impact Fees', by adjusting the capital charges and capital charge recovery fees and removing the annual indexing of amounts (Case T-25-2020, City of Palm Bay), first reading.

The Planning and Zoning Board recommended that the request be approved.

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

Bill Battin, resident, was glad to see that the annual indexing would be eliminated. He wanted to make sure that developers were not receiving credits for the installation of utilities, but then did not require the residents to connect.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to approve Ordinance 2020-79. Motion carried with members voting as follows: Mayor Capote, Yea; Deputy Mayor Johnson, Yea; Councilman Santiago, Yea; Councilman Bailey, Yea; Councilman Anderson, Yea.

8. Ordinance 2020-80, amending the City's Comprehensive Plan Future Land Use Map to change the designated use of property located west of and adjacent to Bass Pro Drive, in the vicinity south of Palm Bay Road, from Commercial Use to Multiple-

Family Residential Use (2.49 acres) (Case CP-9-2020, AD1 Urban Strategy Palm Bay Retail LLC), only one reading required.

The Planning and Zoning Board voted to approve the request, but it failed due to a tie vote.

The City Attorney read the ordinance in caption only. The public hearing was opened. Councilmembers disclosed ex parte communications.

Bruce Moia, MBV Engineering, Inc., and representative for the applicant, presented the request to Council.

Deputy Mayor Johnson asked if the applicant had worked with City's Community Planning and Economic Development Department. Mr. Moia confirmed same. Deputy Mayor Johnson asked the tax base if commercial were to remain instead of residential. Mr. Moia said it would be approximately \$3 million, compared to \$16 million with the residential use.

Mr. Santiago asked about the demographics for the complex. Mr. Moia said it was a 55-plus community. Mayor Capote asked how many units were proposed. Mr. Moia answered it would be 99 units.

Mr. Bailey said there were comments regarding school concurrency in the Staff Report, which stated that Riviera Elementary and Stone Magnet Middle Schools were not projected to have enough capacity for the total of projected and potential students from this development. Mr. Moia said multi-family and 55-plus communities did not have a large impact on school concurrency.

Bill Battin, resident, said that City claimed there was no commercial land but now was rezoning commercial property to residential. He asked that his comment also apply to Item 9, under Public Hearings. Mr. Moia said things changed based on the market and only ¼ of the property was being changed to residential, but the tax base would be five times that of commercial with half of the traffic.

Mr. Bradley said that the applicant could not limit the community to 55-plus only. He said staff denied the request based on its proximity to Interstate 95 and Bass Pro. Staff was willing to work with the applicant for more of a mixed-use category at the site. Mr. Bailey asked for a legal opinion on the 55-plus only restriction and if Council could place a condition on the request, if necessary. Ms. Smith said Council could place a condition on the rezoning, but not the land use request.

Mrs. Junkala-Brown expressed concerns from the standpoint of economic development, including: a) 55-plus community being located near Space Coast Harley Davidson; b) traffic congestion; c) the site was prime real estate for commercial off of Interstate 95 and adjacent to two hotels; and d) the City would still receive the tax benefit, regardless if it was residential or commercial, but it would be higher if it was \$13 million versus \$6 million. She supported Growth Management's recommendation and answered questions posed by councilmembers.

Mr. Bailey said that adding more people to the community meant that there had to be more services, so even if there was more revenue, there was also more expense.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to deny Ordinance 2020-80.

Deputy Mayor Johnson said that changing the land use would contradict the element by removing commercial from an area that had been that way for over forty (40) years. He was optimistic that a commercial use could be found for the site.

Mayor Capote said that commercial uses were promised in that area. He was not willing to change the use and did not feel that the best commercial area should be given away to multi-family.

Mr. Santiago said he liked the facility and although there was a residential component, there should be some mixed use as well. He preferred that the site remain commercial.

Mr. Anderson said that this type of multi-family was needed in the City, but not in this area.

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

9. Ordinance 2020-81, rezoning property located west of and adjacent to Bass Pro Drive, in the vicinity south of Palm Bay Road, from CC (Community Commercial District) to RM-20 (Multiple-Family Residential District) (2.49 acres) (Case CPZ-9-2020, AD1 Urban Strategy Palm Bay Retail LLC), first reading (Quasi-Judicial Proceeding).

The Planning and Zoning Board recommended that the request be denied.

The City Attorney read the ordinance in caption only.

Due to the denial of Ordinance 2020-81, this item was rendered moot.

10. Resolution 2020-56, granting a conditional use to allow for an automotive fuel dispensary in LI (Light Industrial and Warehousing District) zoning on property located in the vicinity east of Northview street and north of Robert J. Conlan Boulevard (3.41 acres) (Case CU-23-2020, Republic Services of Florida, LP) (Quasi-Judicial Proceeding). Considered as the first item under Public Hearings

The item, considered as the first item under Public Hearings, was continued to the November 19, 2020, regular Council meeting.

PROCUREMENTS:

1. Award of Bid: New plant construction, South Regional Water Reclamation Facility – IFB 39-0-2020 – Utilities Department (RJ Sullivan Corporation - \$24,458,000).

Staff Recommendation: Approve the award for South Regional Water Reclamation Facility’s new plant construction to RJ Sullivan Corporation (Pompano Beach), in the amount of \$24,458,000.

Motion by Mr. Anderson, seconded by Deputy Mayor Johnson, to award the bid as requested. Mr. Bailey wanted to make sure that developers were held to their obligations and that all agreements were executed.

Motion carried with members voting as follows:

Mayor Capote	Yea
Deputy Mayor Johnson	Yea
Councilman Santiago	Yea
Councilman Bailey	Nay
Councilman Anderson	Yea

2. Award of Bid: Conversion of septic to sewer, Fred Poppe Regional Park – IFB 63-0-2020 – Parks and Recreation Department (Don Facciobene, Inc. - \$460,598).

Staff Recommendation: Approve the award for the conversion of septic to sewer at Fred Poppe Regional Park to Don Facciobene, Inc., in the amount of \$460,597.50.

Bill Battin, resident, felt it was a lot of money and questioned how many residents could have been put on City sewer with this money or that it could have been used for the pool.

Motion by Deputy Mayor Johnson, seconded by Mr. Anderson, 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. Award of Bid: Clarifier Number 2, North Regional Wastewater Treatment Plant – IFB 76-0-2020 – Utilities Department (L7 Construction, Inc. - \$2,209,700); approval of Task Order 21-02-WT for engineering services (Wade Trim - \$119,895); and a five percent (5%) construction contingency (\$116,480).

Staff Recommendation: Approve the award for North Regional Wastewater Treatment Plant's clarifier number 2 to L7 Construction, Inc. (Sanford), in the amount of \$2,209,700; approve Wade Trim's Task Order 21-02-WT for engineering services, in the amount of \$119,895; and approve a five percent (5%) construction contingency, in the amount of \$116,480.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to award the bid, and approve the task order, and contingency 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.

UNFINISHED AND OLD BUSINESS:

1. Appointment of one (1) member to the Code Enforcement Board.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to appoint Susan Lee Walberg to the Code Enforcement 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 Community Development Advisory Board.

The individuals were rated by the City Council due to the number of applications exceeding the number of vacant positions. No. 1 represented the first choice of each councilmember and so on. The individual(s) receiving the lowest number(s) to the position(s) were considered for appointment to the board.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to appoint Henry Morin to the Community Development 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 and congratulated newly elected councilmembers.

1. Deputy Mayor Johnson said that the procedures implemented for the recent Special Council Meeting made the meeting run efficiently. He would support revisions to Council's Policies to add such procedures.
2. Mr. Bailey suggested a workshop with the new councilmembers to review Council's Policies and Procedures.
3. Deputy Mayor Johnson asked that City offices be closed on Christmas Eve. Mayor Capote said that Council had implemented a policy. Mrs. Lefler said the policy stated that if the holiday fell on a Thursday or a Tuesday, offices would be closed on the Friday or Monday.
4. Deputy Mayor Johnson announced the Veterans Day Parade to be held on Saturday, November 7th. Mr. Bailey said he would prefer that the parade be held on the actual day instead of a few days prior to Veterans Day.

NEW BUSINESS:

1. Consideration of an agreement with Automated Merchant Systems (AMS)/InvoiceCloud to process electronic payment transactions.

Staff Recommendation: Authorize the Acting City Manager to negotiate and execute a service agreement with Automated Merchant Systems and InvoiceCloud to process electronic payment transactions.

Motion by Deputy Mayor Johnson, seconded by Mr. Anderson, to authorize negotiation and approval of a service agreement 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.

2. Consideration of Fiscal Year 21 budget modifications based on increase in state shared revenues (\$525,673).

Staff Recommendation: Approve the allocation of funding in the Fiscal Year 21 budget as presented in the City Manager’s Legislative Memorandum, in the amount of \$525,673.

Bill Battin, resident, asked how the position would be funded for Fiscal Year 22. Ms. Sherman said the state shared revenues were recurring.

Mr. Bailey reiterated his concerns regarding the cost of the slides for the Aquatic Pool Center. He wanted to ensure that policies addressed job reclassifications for current employees as it related to whether it was the best person for the job or just a pay increase for the individual.

Motion by Deputy Mayor Johnson, seconded by Mr. Anderson, to approve the allocation of funding.

Motion carried with members voting as follows:

Mayor Capote	Yea
Deputy Mayor Johnson	Yea
Councilman Santiago	Yea
Councilman Bailey	Nay
Councilman Anderson	Yea

3. Consideration of an engineering assessment of Unit 49 road paving to determine the construction cost and funding impact to advance Unit 49 to Year 3 of the Road Paving Program.

Staff Recommendation: Approve an engineering assessment, conducted by staff, of Unit 49 road paving to determine the construction cost and funding impact to advance Unit 49 to Year 3 (from Year 5) of the Road Paving Program.

Individuals commented and supported moving Unit 49 to Year 3.

Leeta Jordan, resident, said that when the Program was presented, residents were told that the worst roads would be done first, and work would be performed in each quadrant, each year. She said that Units 30 and 49 should be bundled or, as an alternative, the cost of paving the two major collector roads (Madden Avenue and Osmosis Drive) should be bundled with Unit 30. Mrs. Jordan suggested a four-way stop at the intersection of Madden Avenue and Osmosis Drive.

Motion by Deputy Mayor Johnson, seconded by Mr. Santiago, to approve the engineering assessment.

Mayor Capote said it made sense that if Unit 30 was being done in Year 3, Unit 49 should be done as well. Mr. Watanabe explained that in the original plans, Unit 49 was in Year 3. Once Council workshops had been held, Unit 49 was shifted to Year 5 due to Unit 42 being moved to Year 1.

Mr. Anderson said that all of the northeast quadrant was being done in Year 2, so Unit 49 should be able to be done in Year 3.

Mr. Santiago agreed that as Unit 30 was adjacent to Unit 49, and since Units 31 and 32 were already complete, it made sense to add Unit 49 to Year 3.

Mr. Bailey did not support the request and felt Council should not set a precedent based on a few residents lobbying for the change. He said that Unit 49 should be last and explained his concerns with moving it to Year 3. He added that Council and staff should making the decision based on the City as a whole.

Mayor Capote said the request was for a study to be performed and there was no guarantee that Unit 49 would be moved to Year 3. Discussion ensued between Councilmembers Bailey and Anderson. Deputy Mayor Johnson called a Point of Order to call the question.

Motion carried with members voting as follows:

Mayor Capote	Yea
Deputy Mayor Johnson	Yea
Councilman Santiago	Yea
Councilman Bailey	Nay
Councilman Anderson	Yea

ADMINISTRATIVE AND LEGAL REPORTS:

There were no reports.

PUBLIC COMMENTS/RESPONSES:

A resident made a general comment.

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ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 11:20 p.m.

Kenny Johnson, DEPUTY MAYOR

ATTEST:

Terri J. Lefler, DEPUTY CITY CLERK