

# CITY OF PALM BAY, FLORIDA

## REGULAR COUNCIL MEETING 2021-06

Held on Thursday, the 4<sup>th</sup> day of March 2021, 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.

Senior Pastor Jerry Klemm, Covenant Presbyterian Church, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

### ROLL CALL:

<b>MAYOR:</b>	Robert Medina	Present
<b>DEPUTY MAYOR:</b>	Kenny Johnson	Present
<b>COUNCILMEMBER:</b>	Jeff Bailey	Present
<b>COUNCILMEMBER:</b>	Randy Foster	Present
<b>COUNCILMEMBER:</b>	Donny Felix	Present
<b>CITY MANAGER:</b>	Suzanne Sherman	Present
<b>CITY ATTORNEY:</b>	Patricia Smith	Present
<b>DEPUTY CITY CLERK:</b>	Terri Lefler	Present

**CITY STAFF:** Present was Joan Junkala-Brown, Director of Community and Economic Development; Laurence Bradley, Growth Management Director; Fred Poppe, Parks and Recreation Director.

### ANNOUNCEMENT(S):

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

- 1. Two (2) vacancies on the Building Construction Advisory Committee (represents 'at-large' positions).++**
- 2. One (1) vacancy on the Community Development Advisory Board (represents 'residential home building', 'actively engaged in home building', 'employer within the City', or 'for-profit provider' positions).++**
- 3. One (1) vacancy on the Sustainability Board (represents 'at-large' position).++**
- 4. Three (3) vacancies on the Youth Advisory Board (represents 'at-large student member' positions).++**

**5. Three (3) vacancies on the Youth Advisory Board (represents 'adult member' positions).++**

**6. One (1) vacancy on the Business Improvement District Board (represents 'at-large' position).+**

**AGENDA REVISION(S):**

1. Ms. Sherman announced that Ordinance 2021-11 (Item 2, under Public Hearings) had been revised by correcting the lot count to 171 under the second 'Whereas' clause and removing condition 'H' under Section 2.

**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 1, 9, and 11, from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**1. Adoption of Minutes: Regular Council Meeting 2021-04; February 4, 2021.**

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

**2. Contract: Malabar Road pipe repair project, Change Order 1 - Public Works Department (Insituform Technologies, LLC - \$114,958 (utilizing Stormwater Utility Fund Undesignated Fund Balance)).**

Staff Recommendation: Approve Change Order 1 to the Malabar Road pipe repair project, Project 20SU12, with Insituform Technologies, LLC (Chesterfield, Missouri), in the amount of \$114,958 (\$57,400, plus 5% contingency of \$57,558), utilizing the Stormwater Utility Fund Undesignated Fund Balance.

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

**3. Miscellaneous: 'Cooperative Purchase', TV Inspection Vehicle (Houston-Galveston Area Council Contract) - Utilities Department (CUES, Inc. - \$185,452).**

Staff Recommendation: Approve the 'cooperative purchase' of a TV inspection vehicle from CUES, Inc. (Orlando), utilizing the Houston-Galveston Area Council contract, in the amount of \$185,452.

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

**4. Miscellaneous: Water Master Plan update, Task Order 21-07-IS - Utilities Department (Infrastructure Solution Services - \$224,230).**

Staff Recommendation: Authorize the execution of Task Order 21-07-IS for the Water Master Plan Update, against Master Agreement 36-0-2020, with Infrastructure Solution Services, in the amount of \$224,230.

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

**5. Ordinance 2021-09, amending the Code of Ordinances, Chapter 59, Quasi-Judicial Proceedings, by modifying procedures contained therein, 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 2021-10, amending the Code of Ordinances, Chapter 52, Boards, Subchapter 'Community Development Advisory Board', by modifying the Rules of Procedure for meeting frequency and quorum requirements, 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. Consideration of the Community Development Block Grant (CDBG) Program Grant Agreement for Fiscal Year 2020-2021.**

Staff Recommendation: Authorize the City Manager to execute the Community Development Block Grant (CDBG) Program Grant Agreement for Fiscal Year 2020-2021.

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

**8. Consideration of exceeding the \$20,000 maximum award for SHIP Emergency Repair strategy by \$5,000 under the approved LHAP for 931 Crocus Street NE.**

Staff Recommendation: Authorize staff to exceed the \$20,000 maximum award for SHIP Emergency Repair strategy by \$5,000 under the approved LHAP for necessary unforeseen repairs to 931 Crocus Street NE.

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

**9. Consideration of accepting the 2020 Annual Reports from L3Harris Technologies and Midwest Dental Arts for the City's Ad Valorem Tax Abatement Program.**

Staff Recommendation: Accept the 2020 Annual Reports from L3Harris Technologies and Midwest Dental Arts as certified by the Brevard County Property Appraiser for the City's Ad Valorem Tax Abatement Program.

Bill Battin, resident, asked if Midwest Dental would still be eligible if they did not meet the employment criteria.

Mrs. Junkala-Brown said the one hundred percent (100%) completion for the abatement for L3Harris Technologies would not be until Fiscal Year 2026. She detailed the reasons for same. She said that Midwest Dental was to receive its Certificate of Occupancy this year so the ad valorem tax abatement would not be effective until the 2021 property tax year.

Mr. Bailey asked if there was a deadline to receive the Certificate of Occupancy. Mrs. Junkala-Brown said, per the statute, there was no requirement to perform within a certain period of time. The City could, through an Economic Development Incentive Agreement, require a performance period which was typically three (3) years. Mayor Medina said that agreement option should be used in the future. Mrs. Junkala-Brown answered questions posed by councilmembers.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to accept the 2020 Annual Reports from L3Harris Technologies and Midwest Dental Arts for the City's Ad Valorem Tax Abatement Program. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**10. Consideration of appropriation from General Fund Undesignated Fund Balance for FY21 Disaster Recovery Solution hardware and software maintenance (\$58,791).**

Staff Recommendation: Approve the appropriation of \$58,791 from General Fund Undesignated Fund Balance for Fiscal Year 2021 Disaster Recovery Solution hardware and software maintenance on the next scheduled budget amendment.

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

**11. Consideration of prepayment of the Utility Special Assessment Bonds, Series 2003A.**

Staff Recommendation: Approve the prepayment of the Utility Special Assessment Bonds, Series 2003A.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to prepay the Utility Special Assessment Bonds, Series 2003A.

Mr. Bailey asked what would happen with the dollars that were saved. Ms. Sherman said the funds had to be used for the purpose in which the original assessment was created, so it would be placed towards infrastructure in those units.

Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**12. Consideration of appropriation of funds from the General Fund Undesignated Fund Balance for Finance Revenue Division lien escrow credit card acceptance (\$5,700).**

Staff Recommendation: Approve the appropriation of \$5,700 from the General Fund Undesignated Fund Balance into the Finance Revenue division credit card acceptance line-item budget on the next scheduled budget amendment.

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

**13. Consideration of travel and training for specified City Employees (Public Works Department).**

Staff Recommendation: Approve the travel and training as specified.

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

#### **RECOGNITIONS AND PROCLAMATIONS:**

The proclamations were read.

- 1. Hemophilia and Bleeding Disorders Awareness Month - March 2021. (Councilman Foster)**
- 2. National Procurement Month - March 2021.**

#### **PRESENTATIONS:**

**1. Pastor Ken Delgado, The House Church, along with the churches of Palm Bay and community businesses, to honor the City of Palm Bay for its partnership with the Family Christmas Extravaganza Event 2020.** Pastor Delgado presented the Police, Fire, and Parks and Recreation Departments with a \$1,000 check each for their assistance with the event.

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

There were no public comments.

#### **PUBLIC HEARING(S):**

- 1. Consideration of a CARES Act Substantial Amendment to the FY 2019-2020 Annual Action Plan (final hearing).**

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

Motion by Deputy Mayor Johnson, seconded by Mr. Foster, to approve the CARES Act Substantial Amendment as requested. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

- 2. Ordinance 2021-11, granting approval of a Final Development Plan for a proposed single-family residential Planned Unit Development (PUD) to be known as 'The Preserves at Stonebriar Phase II' on property located north of the**

**Melbourne Tillman Drainage District Canal 41-R, in the vicinity between Cogan and Windbrook Drives (28.878 acres) (Case FD-4-2021, Forestar USA Real Estate Group, Inc.) (Quasi-Judicial Proceeding), first reading.**

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

The City Attorney read the ordinance in caption only. The public hearing was opened. Jake Wise, Construction Engineering Group, LLC, and representative for the applicant, presented the request to Council. He said that the townhomes were eliminated from the original plan and an additional access was included.

Mr. Bailey said that Item H was deleted from the conditions and asked if it was at the request of staff or the applicant. Ms. Sherman said it was removed by staff. Mr. Bailey said that Fairway Crossings had a back entrance roadway that intersected with the proposed development. Mr. Wise said it had always been part of the master plan that the two communities would be interconnected.

Mr. Felix said he was a resident of Fairway Crossings and hoped that the applicant would work with the homeowner's association (HOA) to address concerns. Mr. Wise said an additional gate would be considered and he would look into speeding/traffic issues.

Mayor Medina said his main concern was the two (2) points of access flowing onto Cogan Drive. He wanted to see an access point onto another main corridor. Mr. Wise said he was currently working with Summerfield HOA to create an emergency only access point which would connect directly to Eldron Boulevard.

Mr. Bailey asked staff if a third access was ever required. Mr. Bradley responded that it was not a requirement and advised that staff had conversations with Summerfield asking to reconsider the access, but Summerfield was not willing to grant access because they did not want to allow access to incoming traffic from Eldron Boulevard.

Bill Battin, resident, said that the City should not blame or hold the developers responsible for decisions made by previous Councils.

Betty Arnold, President of Fairway Crossings HOA, said the original Easement Agreement was executed around 2005, which gave access for further development behind Fairway Crossings, across its roadway to Stonbriar Drive and out to Cogan Drive. A Road Sharing Agreement was executed in 2006 and D.R. Horton was the Board of Directors at that time. Ms. Arnold said there were no minutes reflecting the approval of

the Road Sharing Agreement and was unsure if the agreement was valid. She expressed concern for children due to speeding on Cogan Drive. Ms. Arnold answered questions posed by councilmembers.

Robert Stise, President of Summerfield HOA, expressed safety concerns with the access point. He had no problem with a gate for emergency purposes only but questioned who would be responsible if the gate was damaged. He also asked for placement of a vinyl fence along the preserve road and installation of barbed wire to prohibit all-terrain vehicles (ATVs).

Mr. Wise responded to comments and said that the applicant was willing to work with the HOAs, with safety being the main priority.

The public hearing was closed.

Motion by Deputy Mayor Johnson, seconded by Mr. Bailey, to approve Ordinance 2021-11, subject to the staff comments A-F contained in the Staff Report being addressed upon submission of the administrative construction plan approval.

Mr. Foster said he would support the request for the first reading, but safety was still a major concern. He strongly encouraged the applicant to work with the HOAs and residents regarding an emergency access.

Mr. Bailey said there was no evidence presented that there would be a safety issue for not having a third exit. He did not feel it was an issue and it was said that there were other communities with the same number of residents that only had one exit. He felt there was no reason to deny the request.

Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**3. Ordinance 2021-12, amending the Code of Ordinances, Chapter 51, Public Hearings, by modifying provisions for withdrawal and denial of public hearing requests (Case T-6-2021, City of Palm Bay), first reading. (Councilman Bailey)**

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

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



Bruce Moia, MBV Engineering, questioned if the request could be brought back to Council with significant changes if the initial request were denied by Council. Ms. Smith clarified that “substantial” would mean changing the project from what was initially presented. Mr. Moia said there may be instances in which the representative for the applicant could not make major decisions on behalf of the applicant immediately at the meeting and then the request may end up being denied. He referenced language that was part of Brevard County’s ordinance. There was further discussion on examples of substantial changes.

Motion by Mr. Bailey to continue the item to later in the meeting to allow staff to review Brevard County’s language. Mayor Medina asked that public comments be heard.

Phil Weinberg, resident and Chairman of the Planning and Zoning Board (P&Z), felt the language should reflect that staff should determine if the requests were substantially different. The public hearing was closed.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to continue the item after Item 5, under Public Hearings.

Motion carried with members voting as follows:

Mayor Medina	Yea
Deputy Mayor Johnson	Yea
Councilman Bailey	Yea
Councilman Foster	Nay
Councilman Felix	Yea

**4. Ordinance 2021-13, amending the Code of Ordinances, Chapter 185, Zoning Code, by including provisions for protests by property owners (Case T-6-2021, City of Palm Bay), first reading. (Councilman Bailey)**

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

The City Attorney read the ordinance in caption only. The public hearing was opened. Councilman Bailey presented the request to Council. Mr. Bradley explained the proposed ordinance amendments.

Residents of Plantation Circle spoke in favor of the request and explained their reasons for same.

Phil Weinberg, resident and Chairman of the Planning and Zoning Board, felt the ordinance would set a dangerous precedent. He said that residents of Plantation Circle knew they had a voice, and it was heard. The case related to Plantation Circle was presented to P&Z six (6) times and P&Z voted in favor each time. Mr. Weinberg did not feel that a super majority vote was needed.

The public hearing was closed.

Motion by Mr. Bailey, seconded by Mayor Medina, to approve Ordinance 2021-13.

Mayor Medina said this was about restoring something that was taken away from the residents. He said it was giving the residents a tool of engagement and being part of the communication process with City Council. He supported the request.

Mr. Felix felt that while this request invoked the rights of the property owners, it restricted the rights of the developers.

Mr. Foster said the ordinance was not needed to file a protest for property rights. It was provided by the State Constitution and Florida Statutes. He felt this took away due process and did not treat businesses fairly in Palm Bay. He did not support the request.

Mayor Medina felt this provided residents with a tool for Council to hear their voice. Deputy Mayor Johnson said this was not just about Plantation Circle, but the City as a whole. He said it was not about the law, but he could not support the request. Mr. Felix said in looking at the City overall, he was concerned that the City could not grow for business and a business tax base needed to be built. He did not support the request.

Mr. Bailey said the Supreme Court ruled that this was not only constitutional, but also desirable. He said that if the motion failed, there was other language in the ordinance that he felt should still move forward or be brought back for Council's consideration.

Motion failed with members voting as follows:

Mayor Medina	Yea
Deputy Mayor Johnson	Nay
Councilman Bailey	Yea
Councilman Foster	Nay
Councilman Felix	Nay

**5. Request by 2501 LLC (Sabal Palm Square), for Final Subdivision approval of a proposed development consisting of three (3) commercial lots to create two (2) additional outparcels, which property is located in the vicinity of the southwest corner of Babcock Street and Palm Bay Road, in CC (Community Commercial District) zoning (13.71 acres) (Case FS-2-2020) (Quasi-Judicial Proceeding).**

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

The public hearing was opened. Bruce Moia, MBV Engineering, Inc., and representative for 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, subject to the staff recommendations and conditions contained in the Staff Report being completed and approved during the administrative site plan review. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

Note: Item 3, under Public Hearings, was continued earlier in the meeting and considered at this time.

**3. Ordinance 2021-12, amending the Code of Ordinances, Chapter 51, Public Hearings, by modifying provisions for withdrawal and denial of public hearing requests (Case T-6-2021, City of Palm Bay), first reading. (Councilman Bailey)**

The public hearing was opened.

Ms. Smith read the following language which would be included in Section 51.04, Withdrawals, and Section 51.05, Denial of Request by Council or Board:

**Section 51.04 WITHDRAWALS.**

In the event an applicant withdraws a matter after the commencement of a public hearing before the City Council, any re-application for such matter or a matter with similar issues shall not be filed again with the City Council or a board for a period of six (6) months from the date of the public hearing from which it was withdrawn. >>However, the six (6) month period may be waived if there is a substantial change in the application. The Growth Management Director shall determine if the subsequent application is substantially different from the previously withdrawn application by evaluating the reasons for withdrawal, consistency with the comprehensive plan, compatibility with the surrounding area

and other applicable factors in the land development code.<< All withdrawn matters shall be required to meet all public notification requirements, including but not limited to: re-advertisement, courtesy notices, and posting of the property.

**Section 51.05 DENIAL OF REQUEST BY COUNCIL OR BOARD.**

(A) Should either the City Council or any board vote to deny the request made by an applicant and presented at a public hearing, the same or similar issue presented at such public hearing cannot be refiled with the City Council or any board for the minimum period of twelve (12) months after the date of such denial. >>However, the twelve (12) month period may be waived if there is a substantial change in the application. The Growth Management Director shall determine if the subsequent application is substantially different from the previously denied application by evaluating the reasons for denial, consistency with the comprehensive plan, compatibility with the surrounding area and other applicable factors in the land development code.<< Such restriction shall not apply to the owner of real property if the original request was initiated by the City Council, Planning and Zoning Board, or any department or agency of the City.

The public hearing was closed.

Motion by Mr. Bailey, seconded by Deputy Mayor Johnson, to approve Ordinance 2021-12, with the additional amendments as read by the City Attorney.

Mr. Foster reiterated his comments and that he did not support the ordinance.

Motion carried with members voting as follows:

Mayor Medina	Yea
Deputy Mayor Johnson	Yea
Councilman Bailey	Yea
Councilman Foster	Nay
Councilman Felix	Yea

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

**6. Request by FAR Research, Inc. for approval of a conditional use to allow storage of liquified petroleum products, chemicals and similar products on property located south of and adjacent to Rowena Drive, in the vicinity north of**

**Robert J. Conlan Boulevard in HI (Highway Industrial District) zoning (0.46 acres)  
(Case CU-5-2021). (WITHDRAWN)**

**UNFINISHED AND OLD BUSINESS:**

**1. Appointment of two (2) 'at-large' members to the Recreation Advisory Board.**

Deputy Mayor Johnson advised that he was recently approached by two (2) residents that desired to serve on the Recreation Advisory Board. Although the deadline had passed to receive applications for consideration at tonight's meeting, he asked if Council would be willing to extend the application deadline to Wednesday, March 10<sup>th</sup>, and all applications received by that date would be considered at the March 18<sup>th</sup> Council meeting.

Mayor Medina asked if staff would have any quorum issues without the appointment of the positions tonight. Mr. Poppe said that as long as the current members were in attendance at the board meetings, there were no quorum issues. Mayor Medina had no issue with extending the deadline for consideration at the first meeting in April.

Motion by Deputy Mayor Johnson, seconded by Mr. Felix, to extend the application deadline to March 24<sup>th</sup>, with appointments to be made at the April 1<sup>st</sup> Council meeting.

Mr. Felix said that he was working with staff on creating an orientation for newly appointed board members.

Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Johnson, Yea; Councilman Bailey, Yea; Councilman Foster, Yea; Councilman Felix, Yea.

**COUNCIL REPORTS:**

Councilmembers addressed various subject.

1. Mr. Foster said that the length of Council meetings had to be reduced. He said it was unfair to keep staff and residents at a meeting until 1:00 a.m. There should be no repetitive comments and there needed to be better order of proceedings.

2. Mr. Foster felt that official letters from councilmembers should be sent by one official, showing a unified front. He said it should come from the Mayor and personal opinions should be removed. The same letter should not be sent from multiple members of Council.

Mr. Bailey said that he had sent out letters and was later informed that Mayor Medina had sent out similar letters, but he felt it was important for each councilmember to have a voice on issues.

3. Deputy Mayor Johnson re-appointed Denise Bowes-Valcin to the Recreation Advisory Board.

**NEW BUSINESS:**

**1. Consideration of rescheduling the second regular Council meeting in March 2021.**

Staff Recommendation: Reschedule the second regular Council meeting in March from Thursday, March 18, to Tuesday, March 16, 2021.

Bill Battin, resident, did not agree with rescheduling the meeting because two (2) councilmembers wanted to attend a racially identifiable conference. He said that pursuant to the City Charter, councilmembers could miss a certain number of meetings. A majority of Council would still be present.

Councilmembers Felix and Foster responded and took offense to Mr. Battin's comments and stated their reasons for same. They stated they would drive back to attend the Council meeting if necessary.

Deputy Mayor Johnson advised that councilmembers could attend via teleconference. Mrs. Lefler confirmed same and added that a physical quorum must be present. Mr. Foster said he would be physically present for the meeting.

Council concurred to leave the meeting as is on March 18<sup>th</sup>.

**ADMINISTRATIVE AND LEGAL REPORTS:**

1. Ms. Sherman provided a brief update on the activities of the City's lobbyist.

**PUBLIC COMMENTS/RESPONSES:**

There were no comments.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at the hour of 11:06 p.m.

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Robert Medina, MAYOR

ATTEST:

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Terri J. Lefler, DEPUTY CITY CLERK