

CITY OF PALM BAY, FLORIDA

REGULAR COUNCIL MEETING 2023-02

Held on Thursday, the 19th day of January 2023, at the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

The meeting was called to order at the hour of 6:01 P.M.

Pastor Tom Walker, Centerpointe Church, Palm Bay, gave the invocation which was followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

MAYOR:	Rob Medina	Present
DEPUTY MAYOR:	Donny Felix	Present
COUNCILMEMBER:	Kenny Johnson	Present
COUNCILMEMBER:	Randy Foster	Present
COUNCILMEMBER:	Peter Filiberto	Present
CITY MANAGER:	Suzanne Sherman	Present
CITY ATTORNEY:	Patricia Smith	Present
CITY CLERK:	Terese Jones	Present

CITY STAFF: Joan Junkala-Brown, Deputy City Manager; Juliet Misconi, Deputy City Manager; Jesse Anderson, Acting Growth Management Director; Nancy Bunt, Community and Economic Development Director; Frank Watanabe, City Engineer.

ANNOUNCEMENTS:

Deputy Mayor Felix announced the following vacancy and solicited applications for same:

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

AGENDA REVISION(S):

Ms. Sherman announced the following revisions:

A. Noted a scrivener's error on the attachment to Item 5, under Consent Agenda (Resolution 2023-02). The grade for the City Attorney's position should be 30 and not 29.

B. Item 7, under Consent Agenda, relating to Ad Valorem Tax (AVT) Abatement to Rogue Valley Microdevices, Inc. included a revised AVT application attachment.

C. Consideration of training/travel for the Florida Sustainable Transportation and Technology Expo, had been added as Item 5, under New Business. (Deputy Mayor Felix)

PROCLAMATIONS AND RECOGNITIONS:

The individual was recognized, and the proclamation was read.

- 1. Recognition: Presentation of the American Flag - honoring the service of Alberta Clinkscales. (Deputy Mayor Felix)**
- 2. Proclamation: Indian Kite Festival - January 22, 2023. (Councilman Johnson)**

A brief recess was taken after which time the meeting resumed.

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

Individuals made general comments.

1. Robert Stise, resident, requested that local businesses be recognized and promoted by the city. He asked that fines for nuisance liens be reviewed as some assessed fines would not be comparable to the cost for the property owner to maintain their property.
2. Bill Battin, resident, said that the Melbourne landfill (Sarno Road site) would no longer be accepting Class III category items (yard trash, construction debris and furniture). He questioned how the contract with Republic Services would be impacted.

A brief recess was taken after which time the meeting resumed.

PUBLIC HEARING(S):

- 1. Ordinance 2023-02, rezoning property located north and south of Ersoff Boulevard, in the vicinity east of Lipscomb Street, from HC (Highway Commercial District) to RMH (Residential Mobile Home District) (2.87 acres) (Case Z-58-2022, Paul Daly and Don Ballew), final reading. (Quasi-Judicial Proceeding)**

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

Motion by Mr. Johnson, seconded by Mr. Filiberto, to adopt Ordinance 2023-02. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

2. Ordinance 2023-03, amending the Fiscal Year 2022-2023 budget by appropriating and allocating certain monies (first budget amendment), final reading.

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

Bill Battin, resident, questioned the American Rescue Plan Act (ARPA) funding for Community of Hope which reflected \$1.2 million, but the actual cost was \$1.7 million. Ms. Sherman said the cost difference would be reflected on the next budget amendment.

The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Ordinance 2023-03. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

3. Ordinance 2023-01, providing for the annexation of certain real property generally located north, south and west of Micco Road, in the vicinity south of Dottie Drive, into the city (302.70 acres) (Case A-5-2022, Tiffany Dismukes Floyd), first reading.

The City Attorney read the ordinance in caption only. The public hearing was opened. Jake Wise, CEG Engineering and representative for the applicant, presented the request to Council. He answered questions posed by councilmembers.

Bill Battin, resident, wanted to ensure that responsibility of the roadway was placed on the developer, not the city. He felt the annexation created a finger or serpentine pattern which was prohibited by law and questioned if the site could have been developed under the jurisdiction of Brevard County.

Mr. Wise and the applicant responded to comments. Mr. Wise said that the development was going to be a Community Development District (CDD) and the CDD would maintain all of the roads and would not be a burden on the city.

The public hearing was closed.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve Ordinance 2023-01. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

CONSENT AGENDA:

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

Motion by Deputy Mayor Felix, seconded by Mr. Johnson, that the Consent Agenda be approved as presented with the removal of Items 2, 4, 7, 8, 9, and 10, from consent. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

1. Adoption of Minutes: Meeting 2022-36; December 15, 2022.

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

2. Award of Bid: Road bond paving, northeast area – IFB 04-0-2023 (Ranger Construction Industries, Inc. - \$6,671,445); and approve the transfer of additional funds from the Undesignated Fund Balance in the amount of \$1,374,641 to be added to the project budget.

Staff Recommendation: Approve the award for road bond paving in the northeast area to Ranger Construction Industries, Inc. (Ft. Pierce); and approve additional budget in the amount of \$1,374,641 to be transferred from 309-0000-392-1001 to 309-7090-541-6303/22GO06.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve the award for road bond paving to Ranger Construction Industries, Inc. and approve the additional budget as requested. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

3. Miscellaneous: 'Cooperative Purchase', generator and fuel tank replacement, City Hall/City Hall Annex/Council Chambers (Florida Sheriff's contract) – Parks and Facilities Department (LJ Power - \$156,325).

Staff Recommendation: Approve the purchase of the generator and fuel tank replacement for City Hall/Chambers/Annex from LJ Power utilizing Florida Sheriff's contract #FSA2-EQU18.0 Heavy Equipment, item #107.

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

4. Contract: Comprehensive plan update, assignment of Contract 64-0-2020 – Growth Management Department (from S&ME, Inc. to Inspire Placemaking Collective – no fiscal impact).

Staff Recommendation: Approve the assignment of Contract 64-0-2020, Comprehensive Plan Update, from S&ME, Inc. to Inspire Placemaking Collective (Orlando).

Randall Olszewski, resident, expressed concern about delays to updating the Comprehensive Plan with the change in company and if there were any additional costs associated with the change.

Mrs. Junkala-Brown explained that this was an assignment of contract and the company staff had not been affected by the name change.

Motion by Mr. Foster, seconded by Deputy Mayor Felix, to approve the assignment of contract from S&ME, Inc. to Inspire Placemaking Collective. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

5. Resolution 2023-02, amending Resolution 2022-51, adopting Classification and Pay Plans and the Position Control Plan for employees of the City of Palm Bay (first amendment).

The City Attorney read the resolution in caption only.

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

6. Resolution 2023-03, amending Resolution 2022-52, adopting the Five-Year Capital Improvements Program for Fiscal Years 2022-2023 through 2026-2027 (first amendment).

The City Attorney read the resolution in caption only.

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

7. Ordinance 2023-04, granting Ad Valorem Tax (AVT) Abatement to Rogue Valley Microdevices, Inc., first reading. (AGENDA REVISION)

The City Attorney read the ordinance in caption only.

Bill Battin, resident, asked if the company would be eligible for a fee reduction and how much revenue would be lost by this tax abatement.

Ms. Sherman confirmed that the company would be eligible for the building fee reduction program as a commercial entity, and they would be required to pay impact fees.

Mrs. Bunt presented the request to Council and responded to questions.

Motion by Mr. Filiberto, seconded by Mayor Medina, to approve Ordinance 2023-04. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

8. Consideration of the Fiscal Year 2022-2023 HOME Disbursement Agreement with Brevard County (\$1,608,607).

Staff Recommendation: Approve the Fiscal Year 2022-2023 HOME Disbursement Agreement between the City of Palm Bay and Brevard County in the amount of \$1,608,606.98 and authorize the City Manager to execute the Agreement.

Mrs. Bunt presented the request to Council.

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

9. Consideration of reallocating funds from the Utilities Operating Undesignated Fund Balance to Utilities Renewal and Replacement Reserves to maintain a fund balance and cover increases to capital projects (\$1,657,000).

Staff Recommendation: Approve a budget amendment allocating \$1,657,000 from Utilities Operating Undesignated Fund Balance to Utilities Renewal & Replacement Reserves.

Bill Battin, resident, said this was a large increase that was due to inflation. He questioned how the budget would be affected in the future due to inflation.

Ms. Sherman said monies should have been built into the budget and it was an oversight by staff, and staff was aware and tracking various projects that could potentially be affected by inflation.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to approve the reallocation of funds as requested by staff. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

10. Consideration of utilizing Stormwater Utility Funds to provide additional funding for the Walden at C-42 Culvert Replacement, Project 22SU02 (\$200,000).

Staff Recommendation: Approve the allocation of \$200,000 from the Stormwater Utility Fund Undesignated fund balance to Project 22SU02, Walden at C-42 Culvert Replacement.

Bill Battin, resident, questioned if inflation would affect future culvert replacements and the Road Bond Paving Program.

Ms. Sherman said that every project was different and the price for this request had increased due to the cost of concrete.

Motion by Mr. Johnson, seconded by Mr. Filiberto, to approve the allocation as requested by staff. Mr. Watanabe answered questions posed by councilmembers regarding the time frame for completion. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Foster, Yea; Councilman Filiberto, Yea.

11. Consideration of expenditures from the Palm Bay Police Department's Law Enforcement Trust Fund for bank fees associated with the Asset Forfeiture Program (\$500).

Staff Recommendation: Approve the expenditure of funds as specified in the City Manager's memorandum.

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

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

Staff Recommendation: Approve the travel and training as specified.

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

13. Acknowledgement of the January 2023 GO Road Bond Paving report update.

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

14. Acknowledgement of the City’s monthly financial report for November 2022 (Unaudited).

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

UNFINISHED AND OLD BUSINESS:

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

Mayor Medina expressed concern with how the applications were addressed at the previous Council meeting. He said comments were made that Mr. Acosta’s application was incomplete, but the City Clerk’s Office confirmed that the application was complete enough to determine that Mr. Acosta was qualified to serve on the board. He felt Mr. Acosta’s application, as submitted, should have been accepted.

Mrs. Jones explained that applications were not reviewed for completeness, but to determine whether the applicant met the requirements to serve on the board. Mr. Acosta met those requirements; however, it was Council’s discretion and Council was not required to make an appointment just because an application had been submitted.

Motion by Deputy Mayor Felix, seconded by Mr. Johnson, to appoint Jeffrey McLeod to the Citizens’ Budget Advisory Board representing the ‘at-large’ position.

Motion carried with members voting as follows:

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

NEW BUSINESS:

1. Resolution 2023-04, directing the City Manager to develop an administrative code establishing a Concealed Carry Policy for the employees of the City of Palm Bay. (Councilman Johnson)

The City Attorney read the resolution in caption only.

Mr. Johnson presented the request to Council. He said that Brevard County had a policy in place since 2016 with no known incidents.

Individuals made general comments.

Motion by Mr. Johnson, seconded by Mayor Medina, to adopt Resolution 2023-04.

Mayor Medina supported the request and believed in protecting life and being responsible.

Mr. Filiberto asked if the City would be promoting employees to carry a gun while working. Ms. Sherman said it would be more of educating rather than promoting. The policy would provide criteria and there would be clear references as to what could and could not be done in accordance with state law. The City would not take on the responsibility for actual training to achieve a concealed carry permit nor would the City provide any ongoing training. The training that would be provided would be related to do the job duties of that specific employee and interaction with police officers should they respond to a situation.

Mr. Filiberto asked if there would be any legal backing from the City should an employee use their firearm while on the job. Ms. Smith responded that this policy allows employees the option to do something for their own personal benefit and would not be in the course and scope of their employment, unlike law enforcement.

Mr. Foster felt it was a huge liability and employees should be trained to de-escalate a situation.

Chief Augello responded to questions posed by councilmembers.

Deputy Mayor Felix said it was bad policy and agreed with Councilman Foster. He felt this was putting staff in a poor position to create a policy based on the desire of Council, and more guns did not guarantee safety.

Mayor Medina said there were only two instances, with thousands of Brevard County employees, in which a weapon was inadvertently displayed. He was comfortable giving an opportunity for employees to protect themselves.

Motion carried with members voting as follows:

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

2. Resolution 2023-05, providing for the acceptance of the transfer of a portion of Babcock Street from Brevard County.

The City Attorney read the resolution in caption only.

Councilman Foster left the meeting at this time.

Bill Battin, resident, did not want to see the city taking responsibility for roadways just because of project development.

Motion by Mr. Johnson, seconded by Deputy Mayor Felix, to adopt Resolution 2023-05. Motion carried with members voting as follows: Mayor Medina, Yea; Deputy Mayor Felix, Yea; Councilman Johnson, Yea; Councilman Filiberto, Yea.

Councilman Foster rejoined the meeting at this time.

3. Consideration of an amendment to the Subrecipient Contract with Community of Hope, Inc. for American Rescue Plan Act funding (\$518,601).

Staff Recommendation: Approve an amendment to the ARPA Subrecipient Agreement with Community of Hope allocating an additional \$518,601; and authorize the Mayor to execute Amendment 1 to the ARPA Subrecipient Agreement with Community of Hope.

Bill Battin, resident, questioned if the transitional housing was going to be used for housing and assisting illegals.

Mrs. Bunt explained that there were fourteen (14) units which were currently market rate. Community of Hope proposed to provide affordable housing so that the residents would

be able to be low income and income eligible, and would not be bringing in illegal immigrants. She further detailed the plans of Community of Hope and responded to questions posed by councilmembers.

Mr. Foster said he had some reservations. He visited the apartment complex and was shocked that the existing building needed \$1.7 million. Mrs. Bunt said monies went towards the property acquisition and rehabilitation of the units.

Motion by Deputy Mayor Felix, seconded by Mayor Medina, to approve the amendment to the Subrecipient Contract and authorize the Mayor to execute the agreement as recommended by staff.

Motion carried with members voting as follows:

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

4. Consideration of a request to reconsider the denial of Ordinance 2022-105 (Case CP-31- 2022, Waterstone Holdings, LLC).

Ms. Smith presented the request to Council. Pursuant to Section 51.05(B), Palm Bay Code of Ordinances, “the City Council or any board may reconsider the same or similar issue within the twelve (12) month period if a mistake, inadvertence, surprise or excusable neglect has occurred as a result of the actions of the applicant or the city, provided that the event directly or indirectly formed a basis for the City Council's or any board's decision to deny the request at the public hearing.” Ms. Smith summarized the bases for the reconsideration as provided by the applicant.

Jeremy Gorovitz, applicant and Principal Partner at Kamiya, said he had a death in the family two (2) days prior to the hearing and was unable to attend the meeting as it was the same date as the funeral. He did not think of requesting a continuance as he was with family and grieving.

Motion by Mr. Foster, seconded by Deputy Mayor Felix, to approve the reconsideration request.

Mr. Foster felt the applicant met the requirements for reconsideration and it should be granted.

Mayor Medina did not agree with the reconsideration as the applicant could have requested a continuance. He said that the applicant could come back in a year with the same project, or come back sooner with a substantial change to the project. Mr. Filiberto agreed that there was no surprise, mistake, inadvertence or excusable neglect and did not support the reconsideration.

Motion failed with members voting as follows:

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

5. Consideration of councilmembers attending the Florida Sustainable Transportation and Technology Expo, February 1-2, 2023, in Cocoa. (Deputy Mayor Felix) (AGENDA REVISION)

Deputy Mayor Felix would attend the conference; Mayor Medina and Mr. Foster said they may consider attending. Council concurred.

COMMITTEE AND COUNCIL REPORTS:

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

1. Mr. Johnson made the following reports:

a. Commented on the opioid lawsuit and the funding that would be received for the city. The funding could only be used within certain criteria, such as preventative measures, working with nonprofits for programs, etc. He wanted to make sure a plan was in place for when the funding was received. Ms. Sherman said that recommendations would be presented to Council in the future. Some funding had been received late last year and staff has been meeting to discuss the best options to bring to Council.

b. Asked staff to see how Melbourne Police Athletic League (PAL) was operating and how Palm Bay could take steps to re-establish its PAL Program.

2. Mayor Medina made the following reports:

a. Requested consensus to revise Council’s policies to have the agenda packets distributed on Thursday instead of Friday prior to the meeting date. Council concurred.

b. Noted the meeting held with residents regarding Pineapple Cove Classical Academy in the Lockmar area. He said there was no representation from Pineapple Cove. It was said that the traffic issues would be alleviated if Pineapple Cove would follow the traffic study that was submitted with their site plan application. He requested involvement from the City Attorney to communicate with Pineapple Cove to follow the traffic design.

Ms. Sherman said the school representatives were present at the first meeting and there were conversations about different scenarios. There had been some incremental improvement but nothing significant to alleviate the traffic back up into the neighborhood. Ms. Sherman advised there were no provisions within the Code of Ordinances that permitted the city to take any action. Mr. Watanabe detailed the conversations he had with school staff in which a staggered time approach was discussed. School staff said it would be difficult to make modifications during the current school year.

Mayor Medina suggested that the City Attorney review and advise of any options and send a letter to the school staff to meet with city staff. Council concurred.

ADMINISTRATIVE AND LEGAL REPORTS:

There were no reports.

PUBLIC COMMENTS/RESPONSES:

Individuals made general comments.

ADJOURNMENT:

There being no further business, the meeting adjourned at the hour of 10:41 P.M.

Rob Medina, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK