

MAYOR  
Hal J. Rose

DEPUTY MAYOR  
Pat Bentley

COUNCIL MEMBERS  
Daniel Batchelder  
John Dittmore  
Adam Gaffney  
Barbara A. Smith  
Andrea Young



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To: Mayor Rose, Members of the City Council,  
Department Heads and Subscribers

From: Scott Morgan, City Manager

A handwritten signature in blue ink that reads "Scott Morgan".

Date: August 23, 2019

Subject: Friday Memo

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### Introduction

This Friday Memo is for the week of August 19 through August 23. Anyone wanting to be added to the distribution list may contact Tammy Neal at 837-7771 or [tneal@westmelbourne.org](mailto:tneal@westmelbourne.org). As always, if there are any questions or comments on items described in this memo, or on any other City matter, please call.

### Property Purchase Offer Response

On Monday afternoon, the broker for the Ullmer family indicated that after consideration, the Ullmers were not interested in selling the City their properties west of West Melbourne Community Park at this time.

### Construction Bid Awarded for Sylvan Drive Septic to Sewer Project

The award of the construction bid was approved by the City Council Tuesday evening. We are targeting an October construction start, with construction completion prior to December 31, 2020.

### Melbourne Estates Drainage Improvement Grant Application

On Monday afternoon, I sent to Scott Modesitt, our CDBG grant consultant, some narratives needed for a grant application for constructing a potential flood risk reduction project that would benefit our Melbourne Estates neighborhood that was hard-hit by Hurricane Irma flooding in September 2017. (Melbourne Estates is the neighborhood between W. New Haven and Henty consisting of Bossieux, Stephenson, First and Third). On Tuesday evening, the City Council approved the submittal of the grant application. Additional materials were provided our grant consultant later this week, and our final batch of materials are scheduled to be sent to him by the middle of next week in time for us to meet the grant application deadline of August 30.

### Infrastructure Projects

On Tuesday morning, Deputy City Manager Keith Mills met with our project engineers from ISS to review the status of several City infrastructure projects the firm is designing for us and to plan next near-term responsibility for follow-up work. On Wednesday, Keith Mills and I met with engineers from Bowman Engineering to start planning a potential traffic signal project at Hollywood and

Imagine Way. The County Commission will be considering staff recommendations on the allocation of a significant amount of developer-funded traffic impact fees that have been collected in the south part of the County since the County's moratorium expired, and one of the potential improvement projects would be a proposed traffic signal at this location. City staff believes that the need for such a signal has become somewhat more justified since Durham Drive has recently opened to Imagine Way and as the fourth leg of the intersection will be constructed as part of the apartment project under construction on the west side of Hollywood Boulevard north of the West Melbourne Interchange Shopping Center.

#### Water Plant Study

A City Council workshop with our project engineers from Hazen was held on Tuesday evening. Keith Mills and I followed up with our project engineers today to proceed towards the crucial milestone of the final report and staff recommendations now scheduled for Council decision during the regular City Council meeting of October 1.

#### Police and Fire Valor Awards

On Thursday evening, I represented the City at the Melbourne Chamber of Commerce dinner program honoring police and fire personnel for outstanding service and acts of heroism over the past year. The program was very well done.

#### Emergency Operations Center Executive Training

This Monday evening, I will be attending a training session at the Brevard EOC for senior local government executives. The training is on the executive role in the incident command system.

#### Melbourne Chamber Business Advocacy Committee

On Tuesday morning, I have been invited to address the Melbourne Chamber Business Advocacy Committee at the Chamber Offices.

#### Police Officer Swearing in Ceremony

On Friday, I have been invited to attend the swearing in ceremony for newly hired Police Officers Crosby and Stanley. The ceremony will be held in the temporary lobby of the police station.

#### Labor Day Holiday

One week from Monday, on September 2<sup>nd</sup>, is Labor Day. City Hall will be closed that day in observance of the holiday.

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Attachments: 1. August and September Monthly Calendars.  
2. Six Month City Council Agenda Planning Calendar.  
3. Departmental Friday Memos.

## August 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 7:00 a.m. Melbourne Regional Chamber Business Breakfast	2	3
4	5	6 <b>NATIONAL NIGHT OUT</b>  <b>No City Council meeting</b>	7 9:00 Police Officer Pension Bd 11:15 Greater Palm Bay Chamber of Commerce	8 6:30 Charter Review Committee	9	10
11	12 7:00 Space Coast League of Cities Dinner	13 6:30 Planning & Zoning Bd	14 11:30 West Melbourne Business Assoc	15 5:30 Code Enf Bd	16	17
18	19	20 5:30 Council Workshop 6:00 CRA meeting 6:30 City Council	21	22 7:00 Bd of Adjustment cancelled	23 5:00 Food Truck Friday	24
25	26 6:30 Business Adv Bd	27	28	29	30	31

# September 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	 Offices Closed	6:30 City Council	11:15 Greater Palm Bay Chamber of Commerce	7:00 a.m. Melbourne Regional Chamber Business Breakfast		
8		6:30 Planning & Zoning Bd.	11:30 West Melbourne Business Assoc  6:00 Parks & Rec Advisory Bd	6:30 Charter Review Committee		
15	7:00 Space Coast League of Cities Dinner	6:30 City Council		5:30 Code Enf Bd		
22				7:00 Bd of Adjustment	5:00 Food Truck Friday	
29						

Six Month City Council Agenda Planning Calendar

Council Date	Presentations/Workshops/Ceremonies/Public Hearings	Consent/Action Items/Management Reports
3-Sep Regular Meeting 6:30 p.m.	<p>Introduction of New Employee - Administrative Assistant Charnell Parthmore Who Started with City August 28 (Rick)</p> <p>Presentation - Life Saving Award to Eric Rothery Presented by the Police Chiefs Association (Rick)</p> <p>Presentation - Certificate of Recognition for Jake Yanko for Receiving Bronze at the National X-Games (Mayor)</p> <p>Presentation - Proclamation to the Space Coast EDC in Support of the "Salute our Military" Campaign (Mayor)</p> <p>Public Hearing - Tentative Budget and Millage Rate (Scott)</p> <p>Public Hearing - Second Readings of Two Ordinances - Administrative Rezoning of Properties on Stephenson and Bossieux (Christy)</p> <p>Public Hearing - Resolution Adopting 2019-2020 Stormwater Assessment Roll with No Changes in Rates or Assessment Methodology (Scott)</p> <p>Public Hearing - Second Reading of an Ordinance to Modify the Qualifying Period for Mayor and Council Candidates (Cynthia)</p>	<p>Acceptance of the Fell Road Right-of-Way Between Max K. Rodes Park and the Minton Road Right-of-Way from Brevard County (Scott) (action)</p> <p>Bill of Sale for Durham Drive (Morris) (consent)</p> <p>Sale of Retired K-9 German Shepard "Kai" (Rick) (consent)</p>
17-Sep Regular Meeting 6:30 p.m.	<p>Presentation - Jacobs Annual Report (Brian Mascher)</p> <p>Public Hearing - Final Adoption of Budget and Millage Rate (Scott)</p> <p>Public Hearing - Second Reading - Annexation of Acquest Property (Christy)</p> <p>Public Hearing - Space Coast Gateway Center Preliminary Plat (Christy)</p> <p>Public Hearing - First Reading - Comp Plan Amendment to Gateway Interchange and Rezoning for Acquest Property and Large Scale Transmittal for Acquest Property (Christy)</p>	<p>August Statistical Report for Police Department (Rick) (mgmt reports)</p> <p>City Council Annual Review of Police Chief's Performance (Kimberly) (action)</p> <p>City Council Annual Review of City Attorney's Performance (Kimberly) (action)</p> <p>Space Coast Gateway Center Preliminary Plat (Christy) (action)</p> <p>Extension of Interlocal Agreement with Brevard County for Installation and Maintenance of SCAT Bus Shelters (Scott) (consent)</p> <p>Selection of Banking Institution for Servicing City Accounts (Margi) (action)</p>
1-Oct Regular Meeting 6:30 p.m.	<p>Public Hearing - First Reading - Comp Plan Amendment for Buena Vida's Woodland Duplexes (Christy)</p>	<p>Award of Piggyback Contract - 2019-2020 Annual Street Resurfacings (Mark) (action)</p> <p>Award of Construction Bid - Columbia Lane-Brandywine Water Main (Keith) (action)</p> <p>Water Plant Feasibility Study Final Report (Scott) (action)</p>
15-Oct Regular Meeting 6:30 p.m.	<p>Public Hearing - Second Reading - Comp Plan Amendment for Buena Vida's Woodland Duplexes (Christy)</p>	<p>September Statistical Report for Police Department (Rick) (mgmt reports)</p>

Six Month City Council Agenda Planning Calendar

Council Date	Presentations/Workshops/Ceremonies/Public Hearings	Consent/Action Items/Management Reports
5-Nov Regular Meeting 6:30 p.m.		Award of Construction Bid - M-1 Canal Water Main (Keith) (action)
19-Nov Regular Meeting 6:30 p.m.	Public Hearing - Second Reading - Comp Plan Amendment to Gateway Interchange and Rezoning for Acquest Property (Christy)	October Statistical Report for Police Department (Rick) (mgmt reports)
3-Dec Regular Meeting 6:30 p.m.		Modification of Interlocal Agreement with Brevard County for Energy Cost Sharing of Proposed New FP&L Street Lighting Along the West Side of Minton Road from Henry to Just South of Flanagan (Scott) (action)
17-Dec Regular Meeting 6:30 p.m.		November Statistical Report for Police Department (Rick) (mgmt reports)  Adoption of 2020 City Council Meeting Dates (Cynthia) (consent)
7-Jan Regular Meeting 6:30 p.m.	Presentation - 2019 Year in Review (Mayor Rose)	
21-Jan Regular Meeting 6:30 p.m.		2019 Annual Police Department Report (Rick) (mgmt reports)  First Quarter 2019-2020 Budget Status Report (Margi) (consent)
4-Feb Regular Meeting 6:30 p.m.		
18-Feb Regular Meeting 6:30 p.m.		January Statistical Report for Police Department (Rick) (mgmt reports)
3-Mar Regular Meeting 6:30 p.m.		
17-Mar Regular Meeting 6:30 p.m.		February Statistical Report for Police Department (Rick) (mgmt reports)

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To: Mayor Rose and Members of the City Council  
Through: Scott Morgan, City Manager  
From: Morris Richardson, City Attorney *MR*  
Date: August 23, 2019  
Subject: Friday Memo

The Legal Department Friday Memo provides news and information on legal issues affecting the City. If you have any questions regarding this report, please contact me.

### The Sunshine Law

This week's Legal Department Friday Memo serves as a basic refresher on the Sunshine Law for members of the City Council and the City's various boards and committees. Florida's Government in the Sunshine Law provides a right of access to governmental proceedings. The public policy behind the Sunshine Law is to have all deliberations by a public body conducted in public meetings of which the public and the media have received advance notice.

#### 1. What are the basic requirements of the Sunshine Law?

The Florida Government in the Sunshine Law, section 286.011, Florida Statutes, contains three basic requirements:

- a. meetings of public boards or commissions must be open to the public;
- b. reasonable notice of such meetings must be given; and
- c. minutes of the meeting must be taken and promptly recorded.

#### 2. To whom does the Sunshine Law apply?

The City Council and virtually all boards or committees of the City are subject to the Sunshine Law. The Sunshine Law is applicable to advisory boards, even though their recommendations are not binding upon the City Council. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Note, however, that a limited exception to the applicability of the Sunshine Law has been recognized for advisory committees established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

#### 3. What is a "meeting" which is subject to the Sunshine Law?

The Sunshine Law extends to "discussions and deliberations" as well as to formal action taken by a public body. There is no requirement that a quorum be present for a meeting of members to be subject to the Sunshine Law. Therefore, the law is generally applicable

to *any* gathering where two or more members of a public board or commission discuss some matter on which *foreseeable action* will be taken by the board, commission, or committee. The term “meeting” has been found to include briefing sessions, workshop meetings, informal discussions and other meetings of the public body where no formal vote is taken. Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion of a pending employment appeal during a recess of the board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12<sup>th</sup> Cir. Ct. February 27, 2012).

Further, a “meeting” subject to the Sunshine Law does not have to be in person. The Sunshine Law extends to phone calls, letters, emails, text messages, carrier pigeons, messenger ravens, etc.

#### 4. **Public Meetings**

##### a. Notice and Minutes

Procedurally, the Sunshine Law requires the giving of notice to members of the public as to the time and place of the proposed meeting of a public entity, and the subject matter to be discussed. The notice should include, among other things, the time, place, and if available, an agenda of the subject matter. Section 286.011(2), Florida Statutes, states that minutes of all public meetings shall be promptly recorded and made available for public inspection.

##### b. Voting

The use of secret ballot at public meetings is not acceptable. If a vote is required by the council members, a member may not abstain unless there is a bona fide conflict of interest (see below) or, in the context of a quasi-judicial proceeding, if the abstention is to assure a fair proceeding free from potential bias or prejudice. Section 286.012, Florida Statutes.

##### c. Voting Conflicts of Interest

All council members, advisory board members and committee members must keep in mind the possibility of a voting conflict of interest arising as to any items that might come before them based not only on their employment relationship, but upon other situations.

For a voting conflict to arise, “special private gain or loss” must inure to the council member, a principal or parent organization or subsidiary of a corporate principal by whom he/she is retained, a relative, or a business associate. Section 112.3143(3), Florida Statutes. The test formulated by the Commission on Ethics is based in part on the size of the class of persons who stand to benefit from the measure and also based upon the remote and speculative test. Where the class of persons is large, a special gain (or loss) will result only if there are circumstances unique to the member to gain (or lose) more than the other members of the class. Where the class of person benefitting from the measure is extremely small, the possibility of special gain or loss is much more likely. Additionally, if the gain or loss is of a questionable nature or magnitude, or is too remote or speculative, then there may not be “special private gain or loss.”

In addition to abstaining from the vote, if the member intends to participate in the

decision prior to the meeting, the appointed board member should file a memo stating the conflict prior to the meeting. Section 112.3143(4), Florida Statutes. "Participate" means "any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction." The memo shall be incorporated into the minutes of the meeting and read publicly at the meeting. If the member is only participating in the discussion at the meeting, then the conflict should be disclosed orally at the meeting before participating, and a memo should be filed within fifteen (15) days after the vote. No member may participate (attempt to influence the vote) without making this disclosure prior to the discussion on the issue.

d. Public Participation

Previously, Florida courts had determined that the Sunshine Law established a right to *attend* public board meetings, but did not provide a right to be heard. However, section 286.0114, Florida Statutes, effective October 1, 2013, now mandates, subject to specified exemptions, that the public be given "a reasonable opportunity to be heard on a proposition before a board or commission." The opportunity to comment does not have to occur at the same meeting at which official action is taken if the opportunity:

1. Occurs at a meeting that is during the decision-making process; and
2. Is within reasonable proximity in time before the meeting at which the board or commission takes official action.

Boards are not prohibited from "maintaining orderly conduct or proper decorum in a public meeting." In addition, boards are authorized to adopt specified rules or policies governing the opportunity to be heard, such as time limits for speakers.

3. **Does this mean we can't have lunch?**

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially provided that matters which may come before the board or commission are not discussed at such gatherings.

Members of a public board or commission are also not prohibited under the Sunshine Law from conducting inspection trips. However, if discussions relating to the business of the board will occur between board members, advance notice must be given, the public must be afforded a reasonable opportunity to attend, and minutes must be promptly recorded and made available for inspection. In some cases, it may not be possible to invite the general public to attend such trips. In these instances, inspection trips made by members of a public board, together with staff and officials of other organizations and members of the press, are not secret meetings in violation of section 286.011, Florida Statutes even though the general public is not invited to participate. However, members of the public board should avoid discussions with fellow board members regarding public business while on such trips.

4. **Beware of the Consequences!**

Section 286.011(3), Florida Statutes, provides that any violation of the Sunshine Law is a noncriminal infraction, punishable by a fine of up to \$500. Knowing violations of the Sunshine Law are criminal second degree misdemeanors. In addition, attorneys' fees may

be assessed against a party found in violation if a civil action is brought to enforce the law.

Further, no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting. "Therefore, where officials have violated section 286.011, the official action is void ab initio." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). And see, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during meetings held in violation of section 286.011, Florida Statutes, had to be re-examined and re-discussed in open public meetings); and *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under section 286.011, Florida Statutes).

#### 5. **Conclusion.**

In summary, City Council, board, and committee members should not discuss with each other, directly or indirectly, items that will or could foreseeably be discussed and acted on at a future public meeting. This is only a brief summary of the Sunshine Law. It is not inclusive of all of the areas where the law applies. If you have questions concerning specific application, please seek guidance from the City Attorney. If you know of a particular factual situation that may constitute a conflict of interest and some doubt exists whether there is a legal conflict, an advisory opinion from the Commission on Ethics may be obtained.

**Reference:** A valuable source in this area is the Government in the Sunshine Manual - 2019 Edition.

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To: Scott Morgan, City Manager

From: Thomas Forbes, Building Official

Date: August 23, 2019

Friday Memo / Building Department

Weekly activity summary for the Building Department

**Building:**

There were 5 building permits issued for new single family residences and a total of 71 permits issued this period.

**Commercial Project Update:**

The following commercial projects have had permits issued and are in various stages of construction:

- Minton Cove Apartments, Norfolk Parkway.
- Promise in Brevard Bakery & Café, 3000 Minton Road (West Melbourne Community Park), 7,100 sq. ft. new construction.
- West Melbourne Police Station, 2290 Minton Road, 9,489 sq. ft. addition. Addition completed, remodel is in progress).
- Apollo Surgery Center, 375 W. New Haven Avenue, 9,150 sq. ft. (second floor), tenant build out.
- Aventine Apartments, 4515 Durham Drive, 379,594 sq. ft. new construction.
- Pineapple Daycare, 4125 Minton Road, 12,614 sq. ft. new construction.
- Dr. Priyanka, interior alteration of medical offices, 2,500 sq. ft.
- Calvary Chapel, 2955 Minton Road, 1,543 sq. ft. new construction, Central Energy Plant.
- Launch Federal Credit Union, Norfolk Parkway, 6,813 sq. ft. new construction.
- The Springs at Hibiscus, 288 unit apartment complex, 12 apartment buildings, clubhouse and ancillary buildings, total square footage 338,952.
- Carlton of West Melbourne, Hollywood Boulevard, 15-3 story apartment buildings, clubhouse and ancillary structures.
- Buena Vida, 2129 W. New Haven Avenue, exterior renovation.
- Housman Aluminum, 7724 Matrix Way, 6,000 sq. ft. office/warehouse, new construction.
- The Oasis at West Melbourne Apartments, John Rodes Boulevard, 10-3 story apartment buildings, clubhouse and ancillary structures.

- Sprengergarten, 2825 Eber Road, new construction of a 5624 sq. ft. events building and a 6,000 sq. ft. maintenance building.
- B & M Property Holdings, LLC, 7600 Technology Drive, 22,500 sq. ft. warehouse.
- Viet-Yumz, 2233 W. New Haven Avenue, interior build-out.
- Dunkin Donuts – Tract E; 4527 W. New Haven Avenue, interior build-out.
- Beef O’Brady’s, 2400 Dairy Road, interior build-out.

Building Inspections conducted from 08/19/19 to 08/23/19 totaled 284

New Permit applications received from 08/19/19 to 08/23/19 totaled 66

- 5 new single family residence permits.

**Status of Commercial projects submitted for review:**

- City of West Melbourne Maintenance building addition, permits ready to issue.
- YourLife of West Melbourne, NE corner of Minton Road and Heritage Oaks Boulevard, 60,000 sq. ft. new construction, permits ready to issue.
- Cloud Nine Smokeshop, 350 S. Wickham Road, interior renovation, review complete, awaiting revised plans.
- Extended Stay America, West Melbourne Interchange Center (Hollywood Boulevard/Palm Bay Road), 53,000 sq. ft. hotel, new construction, review underway.
- Publix, 2261 W. New Haven Avenue, interior renovation, plans submitted, review complete, awaiting revised plans.
- Folklore Latino (restaurant), 2994 W. New Haven Avenue, 1,100 sq. ft. interior renovation, revised plans submitted, review underway.
- Audi Display Tower, 2260 Coastal Lane, 403 sq. ft, 3 story structure, review underway.
- Olive Garden, 2508 W. New Haven Avenue, interior renovation, plans submitted.
- IHOP, 855 Palm Bay Road, 4,974 sq. ft. interior build-out of new restaurant, plans submitted.

**Code Enforcement:**

The next Code Enforcement Board meeting will be September 19, 2019 at 5:30 p.m.

There were a total of 75 illegal signs removed from the right of way during the past week.

There were a total of 8 new code enforcement cases opened this week, additionally 4 existing cases were closed this past week in compliance.

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To: Scott Morgan, City Manager  
From: Mark Piccirillo, Director of Public Works  
Date: August 23, 2019  
Subject: This Week in Public Works

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The Public Works Streets and Drainage Department has been maintaining the A-2 and A-5 canals this week with the Menzi Muck to the north of Dundee Circle. This section is having the vegetation cut back along the banks to maintain a free flow of stormwater.



Images of Menzi Muck cutting vegetation.

The Public Works Streets and Drainage Department is testing FlexStorm Clean Catch Basin Filters that were donated to the City for the capture and removal of sediment. The filter inserts sit below the grate and will fit any storm drain using FlexStorm farming systems. The debris captured in the filter can then be removed by the Vac-Con without separating the grate. This filter system will help reduce sediment and debris from entering into our water ways. This first trial for the filters were placed on Monaco Road.



Images of storm drains with basin filter installed.

The Public Works Streets and Drainage Department drainage pipe lining CIP contractor, Insituform Technologies, started with this year's lining of a number of drainage pipes in the City. Insituform started on Park Hill Boulevard, completing two drainage pipes at the intersection of Park Hill and Dorchester Avenue. Insituform has moved to Henry Avenue for the third installation, and will then have three more to complete: two on Lake Ibis, and one on Crane Road.



Images of contractor lining drainage pipes.

On Wednesday, Public Works had two pieces of equipment picked up that were traded in towards the City's new 20-ton construction trailer that was purchased to haul the Menzi-Muck. A 1997 Ford F-700 Dump Truck which was replaced this year with a new 2019 Ford F-750 Dump Truck, and a 1988 Dorsey Dump Trailer. The City no longer utilized the two pieces of equipment that were traded in to Dobbs Equipment of Orlando where the new trailer was purchased from.



Images of old equipment being traded in.

The Public Works Water Department completed 182 work orders this past week and completed the City's third quarter fire hydrant flushing program. They also were documenting and numbering the additional fire hydrants located in the Sawgrass neighborhoods into the City's fire hydrant inventory. The Water Department responded to and repaired a water service line leak on Beth Lane and replaced four water service lines from the main to the meters at 45 Piney Branch Way.



Images of City employees replacing water service lines.