

MAYOR  
Hal J. Rose

DEPUTY MAYOR  
John Dittmore

COUNCIL MEMBERS  
Daniel Batcheldor  
Pat Bentley  
Daniel McDow  
Stephen Phrampus  
Andrea Young



CITY HALL  
2240 Minton Road  
West Melbourne, FL 32904  
Phone: (321) 837-7774  
Fax: (321) 768-2390  
www.westmelbourne.org

## CITY COUNCIL REGULAR MEETING

### MINUTES

March 16, 2021

#### 1. CALL TO ORDER

Mayor Rose called the meeting to order at 6:30 p.m.

#### 2. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENT MEDITATION

Mayor Rose led the Pledge of Allegiance followed by a moment of silence.

#### 3. ROLL CALL

Attending in person: Mayor Hal Rose, Deputy Mayor John Dittmore, and Council Members Pat Bentley, Andrea Young, Daniel Batcheldor, and Daniel McDow.

Attending Remotely: Council Member Stephen Phrampus.

*Council Member Bentley moved to approve the remote attendance by Council Member Phrampus. Council Member Batcheldor seconded the motion, which passed unanimously.*

Also present: City Manager Scott Morgan, Police Chief Rick Wiley, Information Technology Director Tom Bradford, Planning Director Christy Fischer, Building Official Thomas Forbes, Jacobs Project Manager Brian Mascher, City Clerk Cynthia Hanscom, and members of the public.

Attending Remotely: Deputy City Manager Keith Mills, City Attorney Morris Richardson, Public Works Director Mark Piccirillo, and Finance Director Margi Starkey.

#### 4. PRESENTATIONS/PROCLAMATIONS/INTRODUCTIONS

**Introduction of New Employee.** Building Official Thomas Forbes introduced Building Inspector II Robert Bitgood, who started with the City on March 15.

## 5. PUBLIC HEARINGS

### **Allowance for City-approved Limited Alcoholic Beverage Service in City Parks.**

City Attorney Richardson presented the second reading of Ordinance No. 2021-09, which would amend Section 10-5 of the City's code to allow for an exception for a written lease or for a special event concessionaire. He reminded Council that Jeff Kiel, President and CEO of Promise in Brevard had spoken at a previous meeting about the desire to have Promise Café function as an event venue. However, they were limited by the prohibition to serve alcohol. The City's ordinance prohibited an alcohol establishment from being located within a certain number of feet from a school, church, kindergarten, nursery school, child care center or public park, based on the type of alcohol license. Also, the lease with Promise prohibits serving alcohol. Therefore, an ordinance amendment as well as a lease amendment are needed for Promise Café to be able to serve alcohol. The lease amendment would be considered by Council later in the meeting and he would be bringing forward a special event policy in the future.

City Attorney Richardson read, in title only, Ordinance No. 2021-09:

### **ORDINANCE NO. 2021-09**

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 10 – ALCOHOLIC BEVERAGES, SECTION 10-5, DISTANCE REQUIREMENT FOR SALE NEAR SCHOOL, CHURCH, KINDERGARTEN, NURSERY SCHOOL, CHILD CARE CENTER OR PUBLIC PARK; PROVIDING FOR SEVERABILITY, CONFLICTS, AND INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

Mayor Rose opened the public hearing.

Randy Bennett, 325 NW Valencia Road, West Melbourne, spoke in favor of the ordinance. He stated he had attended events at the park and agreed that a limited access to alcohol could allow for events to draw people to the park. He offered his business expertise in event planning to assist the City.

There being no other comments, Mayor Rose closed the public hearing.

*Deputy Mayor Dittmore moved to approve the second reading of Ordinance No. 2021-09, amending Chapter 10 – Alcoholic Beverages, Section 10-5 – Distance Requirement for Sale Near School, Church, Kindergarten, Nursery School, Child Care Center or Public Park, to allow for City lessees, concessionaires, contractors, and special event permit holders with alcoholic beverage licenses to operate within defined areas of public park and recreation areas. Council Member Young seconded the motion, which passed 6-1, with Council Member Bentley opposed.*

**Small Scale Amendment and Rezoning for Epoch West Melbourne.** Planning Director Fischer presented the first reading of Ordinance No. 2021-10 and Ordinance No. 2021-11 to change the future land use and zoning designation for a 5.37 acre property located at 3685 Minton Road.

City Attorney Richardson reminded Council that this was a quasi-judicial hearing and that any communication regarding the matter outside of the public meeting should be disclosed. Deputy Mayor Dittmore disclosed he had talked to a resident of Carriage Gate about the plans. Council Member Batchelor disclosed he had conducted research and review of market analysis for housing. Mayor Rose disclosed he had discussions about the property and neighboring properties with the City Manager. Council Member Bentley disclosed he had a discussion with the City Attorney about the request.

Planning Director Fischer provided a background of the 5.78 property that was triangular in shape. The proposed use would be for a multi-family development and the use would change from commercial to urban density residential. The Planning & Zoning Board met on March 9 and recommended approval of both the small scale amendment and the rezoning. She reviewed the comprehensive plan policies and noted that the change was consistent with the goals and policies. Planning Director Fischer also provided an analysis of the rezoning, which would change the zoning designation from C-1 to R-3, which is multi-family. She provided a preliminary site plan of the development of the entire site, which would include the property to the south and adjacent to Promise in Brevard.

City Attorney Richardson read, in title only, Ordinances No. 2021-10 and 2021-11:

**ORDINANCE NO. 2021-10**

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN TO CHANGE THE FUTURE LAND USE FOR A 5.37 ACRE PARCEL OF LAND LOCATED AT 3685 MINTON ROAD, AND AS MORE FULLY DESCRIBED HEREIN FROM COM (COMMERCIAL) TO UD-RES (URBAN DENSITY RESIDENTIAL); PROVIDING AN EFFECTIVE DATE.

**ORDINANCE NO. 2021-11**

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, REZONING A 5.37 ACRE PARCEL OF LAND GENERALLY LOCATED AT 3685 MINTON ROAD, AND AS MORE FULLY DESCRIBED HEREIN FROM C-1 (LOW DENSITY COMMERCIAL) TO R-3 (MULTIPLE-FAMILY DWELLING); PROVIDING AN EFFECTIVE DATE.

Mayor Rose opened the public hearing.

Thomas Krell, 3892 Peacock Drive, Melbourne, Florida, and representing Carriage Gate, read a statement on the official stance of their neighborhood opposing the change to the land use designation. He noted that it was well-known that this section of Minton Road is already problematic and the proposed development of apartments would make the traffic on Minton Road worse. He stated he had spoken with the developers and voiced his concerns. If approved, Carriage Gate would suggest that the intersection between the two developments be improved with a traffic signal or a traffic circle.

Tommy Ciserano, developer of Epoch Apartments, addressed the traffic and access issues and their willingness to work to find a meaningful solution. He also noted that the change in land use would result in a fewer trips per day. He summarized the proposed development noting that the apartments would be four-story with elevators to address a wider demographic than the three-story walk-up apartments. He stated this triangular parcel had been on the market for some time and he hoped that Council would consider their request.

Council Member Young asked if they had purchased the property. Mr. Ciserano stated that it was under contract. She asked if the primary access would be on Norfolk Parkway. He replied affirmatively but there would be a second access point on Minton Road. Planning Director Fischer noted that the development would require that there be two access points, one on Norfolk Parkway and one on Minton Road.

There being no other comments, Mayor Rose closed the public hearing.

Council Member Batcheldor spoke about the trips per day statistics and noted that they could not be compared because there was a significant difference between time of day for commercial and residential uses. He presented statistics for the latest documentation for demand in the area, which was the Space Coast, and believed the amount of development under construction was well above the demand for multi-family housing. He noted there had been an increase in the working population for the aerospace industry but this was only 10 percent of the population for Brevard County and should not be used as the basis for an anticipated increase in demand. In addition, the starting salaries for those in the aerospace industry were high and not consistent with this type of housing.

Deputy Mayor Dittmore asked about the amount of housing under construction and noted that there had been a great deal of development for multi-family housing in West Melbourne.

Council Member Phrampus stated that his concern was the single-family development across Minton Road and the increase in traffic that would impact the entire area.

Mayor Rose commented the property was uniquely shaped and its location was not well-suited for commercial use. He did not know what else would be a good use for the property.

Mr. Ciserano stated he appreciated the comments about the statistics but noted that a great deal of capital would be used to develop the land, which would not be considered if the research did not indicate that it could be successful. He noted that the multi-family developments recently built had absorbed all the renters, which were not all defense related. The apartments would act as incubators for the permanent population in the community. He also stated that traffic impact fees dollars from this project could be dedicated to upgrades to Minton Road to alleviate the traffic concerns.

Council Member Bentley asked about occupancy rates and stated, from talking with former co-workers at L3Harris, they are still hiring and engineers are in high demand. He also agreed that there were traffic issues on Minton Road and did not want to exacerbate the problem.

City Attorney Richardson stated that Council needed to consider the consistency with the Comprehensive Plan and the compatibility with neighboring properties. He stated the City could not have a moratorium on development based on traffic, but could have the developers pay their fair share. The existing traffic deficiencies could not be a basis for denial. City Attorney Richardson stated that the Council had some flexibility in considering the land uses to be consistent and compatible with considerations of the existing housing inventory.

When asked, City Manager Morgan stated that he believed the use would be compatible with the surrounding area.

*Council Member Bentley moved to approve the first reading of Ordinance No. 2021-10 to change the future land use on 5.37 acres of property located at 3685 Minton Road from the current designation of Commercial to Urban Density Residential. Council Member McDow seconded the motion. In a roll call vote, the motion failed 3-4, with Deputy Mayor Dittmore and Council Members Young, Batcheldor, and Phrampus opposed.*

Ordinance No. 2021-11 was not considered because approval of the land use ordinance was first needed.

## **6. PUBLIC FORUM**

There were no comments during the public forum.

## **7. CONSENT AGENDA**

*Council Member Batcheldor moved to approve the following consent agenda. Council Member Young seconded the motion, which passed unanimously.*

- Regular City Council meeting minutes for March 2, 2021.
- Purchase of two new Ford F-150 4-wheel drive replacement trucks for the Building Department for a total cost of \$54,086.

## **8. ACTION AGENDA**

**First Amendment to Promise Café Lease Agreement.** City Attorney Richardson presented the first amendment to the Promise Café lease agreement. He stated he had negotiated with Jeff Kiel, CEO and President of Promise in Brevard. The amended lease would remove the prohibition of serving alcohol but would prohibit the sale of alcohol to the public. He stated that Promise must obtain an alcohol license and provide some kinds of measure so that the alcohol could not leave the property. He

stated that special events must be approved by the City Manager and additional police protection may be required. City Attorney Richardson said the lease allowed for the City to terminate the ability to sell alcohol should there be any alcohol-related problems.

*Deputy Mayor Dittmore moved to approve the First Amendment to the agreement between the City of West Melbourne and Promise Inc. Council Member Young seconded the motion, which passed 6-1, with Council Member Bentley opposed.*

**Settlement Agreement - Levesque v. City of West Melbourne, et al.** City Attorney reviewed the settlement agreement for Levesque v. City of West Melbourne, et al. He stated that at the last meeting he had reported on a settlement offer which the City had rejected which would have allowed the complainant to dismiss and refile individually against the officers. There was a mediator involved who had arrived at a settlement proposal of \$100,000 in exchange for four releases. He noted this settlement includes the individual officers and is considered a zero dollar settlement for the City. He reiterated that this settlement would not indicate the officers did anything wrong and the case was a low risk of liability. He stated this sends the message that we are well armored and well defended. It would be no reflection on the department or the officers.

*Deputy Mayor Dittmore moved to approve the mediated settlement agreement in the case of Dianne Levesque, as Personal Representative of the Estate of Donald Whitmer, Jr. v. City of West Melbourne, et al., Case No. 6:19-cv-2187-Orl-40DCI in the United States District Court for the Middle District of Florida, Orlando Division. Council Member Young seconded the motion.*

Mayor Rose commented that he did not like the agreement because the City and officers did nothing wrong. This sends the wrong message. He realized that this was a business decision but he did not like it. He was glad to see that the officers were being defended but this was not a case of winners or losers because it was a tragedy that someone died.

Council Member McDow stated he initially had the same misgivings, but after talking with the City Attorney, it was explained that that this would send a message that the City was not a soft target.

Council Member Bentley stated that the saving grace of this agreement is that it takes the officers out of the suit, which was worth agreeing to the settlement.

*Council then voted on the motion, which passed 6-1, with Mayor Rose opposed.*

**M-1 Canal Water Main Extension Project.** Deputy City Manager Mills presented the summary of the bid for the M-1 Canal Water Main Project. He explained the project would place a water main along the M-1 canal between South Drive and Hibiscus Crossing. The other two sections of the water line had been completed. This was a good project for the City and would prepare for the future water plant. He explained this would also create only cross connections for US 192. The budget for the project was \$2.3 million and the low bidder came in at \$2.265 million.

Deputy City Manager Mills stated that three bids were received for the project and the low bidder was Young's Communications, LLC, a company that had completed several projects with the City and had done good work in the field with few change orders.

Council Member Batcheldor asked the benefits of the different pipes proposed as part of the bid. Deputy City Manager Mills noted that both the HDPE and PVC pipes were acceptable and the City had used both. He noted the construction may be easier with the PVC pipe but the results would be the same. The bid included the alternate pipe to see if there would be a cost savings.

*Council Member Batcheldor moved to award the bid for the M-1 Canal Water Main Project to Young's Communications, LLC, in the base bid amount of \$2,265,606.23, and authorize the City Manager to execute a contract. Council Member Bentley seconded the motion, which passed unanimously.*

**Renew Contracts with Primary and Alternate Adjunct City Engineer.** City Manager Morgan presented the agreements to extend the continuing services engineering contracts with Bowman Consulting Group and the alternate firm, CivilSurv Design Group. The work with Bowman Consulting Group had been outstanding and the contract prices were favorable.

*Council Member Young moved to approve an agreement with Bowman Consulting Group, Ltd., Inc. for adjunct city engineer services, and approve an agreement with CivilSurv Design Group, Inc. as the alternate firm for adjunct city engineer services, and authorize the City Manager to execute agreements with both firms. Deputy Mayor Dittmore seconded the motion, which passed unanimously.*

**Expenditure of Forfeiture Funds in accordance with the Florida Contraband Forfeiture Act.** Police Chief Wiley presented a proposal to use forfeiture funds in the amount of \$27,500 to purchase equipment and adopt Resolution No. 2021-10 to amend the budget. He stated there was \$56,000 in the restricted fund balance he was proposing to use the funds for the placement of 10 license plate reader cameras for \$27,500. The cameras would be part of a system that would require an annual maintenance cost of \$25,000. The cameras would be placed strategically in the City.

Lieutenant Antonio Romano presented on the Flock Safety Camera system, which would read the license plates. It was powered with either a direct connection or solar power. The data is entered into a system that is updated regularly and was web based. This system could be connected with other agency cameras.

Council Member Phrampus asked why the yearly costs were \$25,000. Chief Wiley explained it was the cost for the technology to record and maintain the information. Council Member Phrampus asked if the yearly costs could be absorbed in the current budget. Chief Wiley indicated it could not and would be shown as an increase in future years.

Council discussed the cameras which would be leased. City Attorney Richardson said he had reviewed the contract and noted that it would not allow for the City to purchase

the cameras. He noted the contract term was 24 months with a user agency satisfaction guarantee that would allow for the contract to be terminated.

Council discussed how the system would work and how it could be used to track criminals. Todd Troutman, Territory Sales Manager for Flock Safety, was present remotely and reviewed several cases where the cameras were used as an important investigative tool to track and identify suspects.

Council discussed how this could be used by homeowners associations rather than their regular cameras. Council also discussed the locations of the cameras.

Council Member Batcheldor asked if it could identify the driver. Lieutenant Romano stated that this would be a tool in the entire investigative process. Council Member Batcheldor commented on the false positive rate and that it should be taken into account.

City Manager Morgan stated, having seen a demonstration of the product, he believed the system should be a priority and recommended that the Council moved forward.

*Council Member Bentley moved to authorize the expenditures of forfeiture funds in the amount of \$27,500 in accordance with the Florida Contraband Forfeiture Act and adopt Resolution No. 2021-10 amending the adopted 2020-21 budget to increase approved general fund expenditures by \$27,500. Council Member Young seconded the motion, which passed 6-1, with Council Member Phrampus opposed.*

**Proposed Brevard County Fire Services Special Assessment Increase.** Deputy Mayor Dittmore asked that Council consider investigating the cost for West Melbourne to provide their own fire department rather than through the County. This was based on the recent fire assessment increases proposed by Brevard County.

Deputy Mayor Dittmore reviewed the fees collected by the County and the increases proposed. He also presented analysis on the number of calls received by the Brevard County fire station located in West Melbourne and the number of calls actually in West Melbourne. He noted that the total calls would amount to about 73 percent of one fire station. Deputy Mayor Dittmore presented the recent costs for Rockledge to build a new fire station.

Deputy Mayor Dittmore stated he was recommending Council engage a professional firm and expedite a study to determine the need, location and potential savings with a West Melbourne Fire Department.

City Manager Morgan updated Council on a meeting that had been held with County officials by phone. He reported that the County officials believed the proposed \$6.4 million paid by the City residents in the fire assessment was a good value. The City is trying to have them look at this from a risk perspective if West Melbourne leaves the system but they have not done the analysis. City Attorney Richardson agreed and stated that he did not believe they had done the analysis of what they could save versus

what they would lose. Mayor Rose commented that he believed the West Melbourne residents were subsidizing the lesser compact portions of the County.

Council Members discussed impacts on the cost to property owners and the associated costs of moving fire services.

Council Members discussed the best way to move forward. City Manager Morgan suggested there be a two-step process, similar to that which was used when considering a water plant. The initial step was to conduct an overhead view to provide estimates so that there could be clear Council direction. He suggested he come back to Council in May with more information to help them decide what to do next. Options could also be considered for obtaining a cost estimate of the fire service provided from other municipalities rather than the County. Council Members agreed.

## **9. CITY COUNCIL REPORTS**

Council Member Batcheldor asked that Council support a proposal for updating Chapter 18 for provisions for developers on felling trees and overlaying them as ground material. He also asked that staff relook at the noise ordinance from Chapter 26 and the definitions of "reasonable expectations". He noted that the construction of Grace Church continued until 11 p.m., which was not reasonable.

Deputy Mayor Dittmore spoke about the trash along the road on both I-95 and US 192. He also stated the condition of the landscaping for I-95 looks bad and did not represent the City. He spoke against the contractors throwing their business cards in driveways. City Attorney Richardson stated that it could be considered littering and that he would look at it further. Deputy Mayor Dittmore also reported the Meals on Wheels program may set up a distribution location in northern Palm Bay or in West Melbourne.

Council Member Bentley highlighted several bills before the Florida legislature that could impact local municipalities.

Council Member Young reported from a recent report titled "Dangerous by Design" which listed the top states for pedestrian accidents. She reported on the Tourist Development Commission and the amount that customers of the City of West Melbourne businesses had contributed. She also attended the Brevard County Aging Commission meeting and reported on current issues.

Council Member McDow reported he had attended the Chamber meetings for both Palm Bay and Melbourne as well as an orientation meeting with the Space Coast League of Cities.

Council Member Phrampus reported he had also attended the Chamber meetings for both Palm Bay and Melbourne. He indicated his support for a change in the noise ordinance.

Mayor Rose reported on the Mayors Fitness Challenge and his update provided to the Melbourne Chamber of Commerce Board of Directors. He asked staff to consider

opening up the park for pavilion rentals as well as events and activities in the Veterans Memorial Complex. City Manager Morgan suggested being cautious on reopening indoor classes even though the number of positive cases has gone down.

## **10. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:24 p.m.