



WORK SESSION
Pelham Senior Center
November 16, 2020 – 5:00 p.m.

MINUTES

Proper notice of the regularly scheduled work session of the Pelham City Council was given in advance of such public meeting and the notice remained posted throughout the scheduled meeting.

Members of the Pelham City Council met November 16, 2020 at 5:00 p.m. The regular work session was held in the Pelham Senior Center and was open to the public.

Call to Order

The work session was called to order by Council President Mercer at 5:01 p.m.

Record of Attendance

The following elected officials were present:

Council President Maurice Mercer
Councilmember David Coram
Councilmember Larry Palmer
Councilmember Rick Wash
Councilmember Mildred Lanier
Mayor Gary Waters

Media Present: None

Others Present: City Manager, city department heads, city employees, and members of the public.

Approval of Minutes

A motion was made by Councilmember Coram to approve the October 19, 2020 Regular Council Work Session Minutes. The motion was seconded by Councilmember Wash and passed by unanimous voice vote of those members present.

Executive Session

Council President Mercer stated for the record the purpose of the Executive Session was to discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. City Attorney Bill Justice stated the purpose of tonight's Executive Session are appropriate under Section 36-25-A-7(6), Code of Alabama 1975, as amended.

A motion was made by Councilmember Coram to enter into an Executive Session of the city council for the stated purpose. Said motion was seconded by Councilmember Lanier. Council President Mercer asked the city clerk/treasurer for a roll call vote. The vote to adopt said motion was recorded as follows:

Maurice Mercer, Council President	<u>Yes</u>
David Coram, Council Member	<u>Yes</u>
Larry Palmer, Council Member	<u>Yes</u>
Rick Wash, Council Member	<u>Yes</u>
Mildred Lanier, Council Member	<u>Yes</u>

Council President Mercer asked the members of the city council, Mayor Gary Waters, City Manager Gretchen DiFante, City Attorney Bill Justice, City Clerk/Treasurer Tom Seale and Director of Development Services & Public Works Andre` Bittas to attend the Executive Session. Council President Mercer stated he expected the city council to return from the Executive Session in approximately 25 minutes. The city council went into executive session at 5:04 p.m.

Councilmember Coram moved to adjourn the executive session. Said motion was seconded by Councilmember Palmer. The motion passed unanimously by voice vote of those members present, and the Executive Session was adjourned at 5:40 p.m.

Council President Mercer called the work session back to order at 5:40 p.m.

Old Business

1. Schedule Special Work Session to Discuss (1) Retiree Healthcare and (2) City Hall

Council President Mercer suggested scheduling a special work session in order to allow time to address retiree healthcare and city hall. It was the consensus of the city council to call a special work session for Tuesday, December 8, 2020 at 5:30 p.m. at the Pelham Senior Center. Councilmember Lanier asked the city staff to provide information to the city council prior to the Thanksgiving holiday.

New Business

1. Discussion – Ordinance No. 067-11 Revising the Building Permit Fee Schedule

Director of Development Services & Public Works Andre` Bittas stated he submitted a request in the FY2021 budget to increase the building permit fees. He said after a review he decided to recommend to the city council to increase some of the fees and include additional fees which are not a part of the current schedule in order to be in line with surrounding cities. He said the increases are reasonable. He further stated the FY2021 budget was adopted based on the new fee schedule. He said current options include approving the fee increase or adjusting revenues to actual collections. Mr. Bittas` said the projected increase in revenues would generate approximately \$40,000. He answered questions regarding structure and implication. Council President Mercer asked Mr. Bittas` to bring recommendations to the city council for consideration.

2. Ordinance No. 135-230 for consideration to amend Zoning Ordinance of the City of Pelham to include the establishment of Mixed-Use Districts: MX-N Mixed-Use Neighborhood District and MX-C Mixed-Use Center District

There was no discussion or questions from the city council.

3. Ordinance No. 135-231 for consideration to rezone property located at 96/98 Hilltop Business Center Drive from B-4 (Mini-Warehouse District) to B-2 (General Business District) for applicant Maranatha Properties, LLC

There was no discussion or questions from the city council.

4. Discussion – Council/Staff Retreat and Outcomes

City Manager Gretchen DiFante provided the city council with information related to council/staff retreat scheduled for December 11, 2020 at the Alabama 4-H Center. She discussed the objectives, to include:

Objectives

1. Council members and Mayor will each articulate what they will consider a successful term four years from now.
2. Staff members will articulate what they need in order to be successful and what they need from Council and the Mayor to in order to maximize their ability to support the results of #1 above.
3. Determine what steps need to be taken to ensure the best possible Council/Mayor/Manager relationship.
4. Finalize council operating procedures.
5. Set up committee structure (or other structure as desired by Council).
6. Begin to create an environment for trust and positive relationships to grow and flourish.

Review of Council Agenda

Council President Mercer and City Manager DiFante reviewed the November 16, 2020 city council agenda.

F. Public Hearing

1. Amending the Zoning Ordinance of the City of Pelham to include the establishment of Mixed-Use Districts: MX-N Mixed-Use Neighborhood District and MX-C Mixed-Use Center District
2. Rezoning property located at 96/98 Hilltop Business Center Drive from B-4 (Mini-Warehouse District) to a B-2 (General Business District) for applicant Maranatha Properties, LLC, 140 Commerce Court, Pelham, Alabama 35124

G. Mayor's Comments

H. Proclamation(s) by the Mayor – None

I. Report of the City Manager

J. Request(s) to Address the Council – None

K. Old Business / Resolutions / Ordinances / Orders and Other Business – None

L. New Business / Resolutions / Ordinances / Orders and Other Business

1. **Resolution 2020-11-16-01** for consideration to appoint a city clerk/treasurer

Councilmember Coram moved to add Tom Seale's name to Resolution 2020-11-16-01 for consideration to be appointed as city clerk/treasurer for a term ending on November 4, 2024. Said motion was seconded by Councilmember Wash.

There being no further discussion said motion passed by a unanimous vote of those councilmembers present and the council president declared the same passed.

2. **Resolution 2020-11-16-02** for consideration to affirm and approve the mayor's appointment for police chief for the City of Pelham

There was no discussion or questions from the city council.

3. **Resolution 2020-11-16-03** for consideration to affirm and approved the mayor's appointment for fire chief for the City of Pelham

There was no discussion or questions from the city council.

4. **Resolution 2020-11-16-04** for consideration to appoint a municipal court judge

There was no discussion or questions from the city council.

5. **Resolution 2020-11-16-05** for consideration to appoint a municipal court prosecutor

There was no discussion or questions from the city council.

6. **Resolution 2020-11-16-06** for consideration to appoint a municipal court public defender

There was no discussion or questions from the city council.

7. **Resolution 2020-11-16-07** for consideration to approve the city manager's employment agreement

Councilmember Lanier asked for the opportunity to discuss the employment agreement among the members of the city council. Council President Mercer provided each council member with a copy of the proposed employment agreement. He highlighted the updates from the previous version provided to the city council. Councilmember Coram said all recommendations were taken from the city council. He spoke to the state requirement of a bond on the city manager.

Councilmember Lanier asked City Attorney Bill Justice if a bond is required on the city manager. Mr. Justice stated the statute governing the city manager position requires a surety bond between \$5,000 and \$20,000. Councilmember Lanier inquired about the reasoning behind this requirement and why it was

not in the employment agreement. Mr. Justice said the bond requirement is applicable whether it is in the employment agreement or not. He referenced and read the code section in question.

Councilmember Palmer asked why Resolution 2017-02-20-01 was referenced in the employment agreement. Tom Seale, City Clerk/Treasurer said Resolution 2017-02-20-01 was a part of the employment agreement because it created and established the position of City Manager pursuant to the authority granted to the City under Section 11-43-20 ET SEQ., CODE OF ALABAMA (1975), as amended.

Councilmember Palmer asked about conduct unbecoming of a city official. City Manager DiFante stated the definition was copied from the state code. She noted the city manager position is not a civil service employee. Councilmember Palmer asked about the severance pay and the salary reduction clause in the employment contract. Council President Mercer addressed Councilmember Palmer's questions.

Councilmember Lanier stated her concerns regarding dismissal due to good and just cause, which she which should be defined. Mr. Justice, clarified the 2/3 vote to dismiss the city manager. He said the "governing body" is the voting body, the city council. Councilmember Lanier requested this change be made in the employment agreement. She mentioned other items which had been forwarded to Councilmember Coram. Council President Mercer stated the implied relationship in working with the city council and city manager. Councilmember Lanier asked about approved vacation, accrued days and job performance reviews. Council President Mercer said it was up to the city council to establish guidelines and ratings for the performance review of the city manager.

Councilmember Lanier requested her statement be entered into the minutes of the November 16, 2020 work session, in their entirety.

*Pelham City Council Meeting
November 16, 2020
Start Time: 5:00 pm
Dissent to the Reappointment of City Manager
From City Council Member,
Mildred Lanier*

To my Pelham family, I have no political motivation nor self-interest in bringing the actions of the City Manager to light and to the attention of you and this City Council. Some might say that it's easier to let things go and hope that things will get better. However, I ask you to ask yourself, has anything in our world and government gotten better when those in leadership roles look the other way and fail to do their duty.

I request to put forth a few questions to our Legal Counsel and HR Director.

1. Does the law allow the City Manager, in a state of emotional anger, to use profanity toward any City employee, staff, or City leader?

Legal Counsel: Mr. Justice stated he was not aware of any law or statute prohibiting the use of profanity unless it involves some type of criminal misdemeanor statute regarding menacing or threats.

Councilmember Lanier then asked again if profanity was allowed. Mr. Justice restated his answer. She restated, "So the law does allow it" and he again responded there is no law prohibiting profanity.

Council President Mercer addressed Councilmember Lanier and stated the question had already been answered by the city attorney.

Councilmember Lanier then asked the Human Resources Director the same question.

H.R. Director: Tracy Hill stated she was not aware of any law prohibiting profanity. Councilmember Lanier asked the question again. Mrs. Hill tried to clarify if she was asking if use of profanity was illegal or if it was a violation of city policy. Councilmember Lanier asked the same question again. Mrs. Hill stated since the city attorney had already stated to Councilmember Lanier that profanity was not illegal, she was unsure if she was asking her to confirm or contradict the city attorney's answer. Mrs. Hill confirmed the city attorney's answer. The question was again asked by Councilmember Lanier.

2. Is it against the law for the City Manager, in a state of escalated emotional anger, to throw paper or anything else at a City employee, Staff, or City Leader?

Legal Counsel: Mr. Justice stated there is no law that he was aware of against throwing paper unless it arises to the level of a misdemeanor in the nature of an assault or some kind of danger to the person.

Council President Mercer asked Councilmember Lanier to hold her questions to those related to the city manager's contract. Councilmember Lanier responded that her questions are related to the city manager's contract.

3. Is it against the law for the City Manager, in a state of escalated emotional anger, to physical poke or put a hand on a City employee, staff, or City leader?

Legal Counsel: Mr. Justice stated there are criminal laws against an unwanted touching that creates an apprehension of injury or fear. There are statutes addressing this issue. He said as a general proposition touching someone is not against the law but there criminal statutes describing situations where this could be considered a misdemeanor.

Councilmember Lanier said she would like to ask the same question of the H.R. Director and she restated the question.

H.R. Director: Mrs. Hill responded that she wasn't sure why this legal question was being asked of her when the city attorney had already answered. Councilmember Lanier responded that "you are the H.R. Director and you have to deal with the law every day." She said that the city attorney is not present every day so those issues would come to Mrs. Hill as the HR Director. Mrs. Hill stated that since Mr. Justice is here tonight, she would defer to him. Councilmember Lanier replied, "So, you chose not to answer." Mrs. Hill stated she would defer to the city attorney, when he is available, to address legal matters.

Council President Mercer instructed Councilmember Lanier to direct her questions to the Chair and not to engage in debate.

4. Could the law identify these actions by the City Manager as a hostile work environment that creates an attitude of intimidation?

Legal Counsel: Mr. Justice said he did not know.

For these reasons and the reasons stating in my Personal Statement for Discharge, the actions, the City Manager should not be reappointed with the City of Pelham.

Councilmember Palmer confirmed there was no change in the city manager's auto allowance of \$500 per month. He asked about the automatic salary increases as stated in the employment agreement and could it result in a conflict since the city manager would recommend such employee raises as a part of the budgeting process. Mr. Justice said he could not comment at this time without further research. Councilmember Coram asked if this issue could be addressed at a later time. Mr. Justice said it could be addressed prior to the execution of the employment agreement.

Mayor Waters stated any employee pay increases is brokered between the Pelham Personnel Board and the city council, not the city manager. He said a recommendation from the city manager does not give her the force of law to approve that recommendation. He further stated the city manager is a contract employee and not subject to the provisions of the Civil Service Law. City Manager DiFante said any consideration for a pay increase would be subject to a satisfactory performance evaluation.

8. **Resolution 2020-11-16-08** for consideration to approve the quote from Hixon Consultants, Inc. to provide visual condition assessment and water spray testing of the Ballantrae Clubhouse envelope

City Manager DiFante stated this is a result of the Phase 1 evaluation of the Clubhouse. She said she is not sure what they will find, but there is a maximum of \$15,000 within the current budget.

9. **Resolution 2020-11-16-09** for consideration to approve a request by T-Mobile for an extension for a special use permit for a cell tower modification located at 5050 Beabout Drive

David Aymett, with Center for Municipal Solutions (CMS), the city's telecommunications consultants stated this project is for modification of T-Mobile's equipment on the existing tower located at 5050 Beabout Drive and was approved by the City in 2018. Due to the merger with Sprint, this modification was not been completed. T-Mobile has submitted an application for an extension of the project. CMS has reviewed the application material and the scope of work on the original application has not changed. The applicant has submitted a new application fee and an additional escrow deposit to the City for the project and CMS recommends approval of the extension.

10. **Resolution 2020-11-16-10** for consideration to terminate all Woodland Mobile Home Park leases on March 1, 2021 for the purpose of redevelopment, improvement and revitalization of the property

There was discussion among the members of the city council with regard to specific lot numbers and providing three months of free rent to the residents.

11. **Resolution 2020-11-16-11** for consideration to approved an ABC License application for a 010 Lounge Retail Liquor – Class 1 license for Blues Bourbon and Brews, LLC operating under the trade name Blues Bourbon and Brews, located at 9340 Helena Road; Units H and I, Pelham, AL 35124

Councilmember Coram stated he had visited the applicant's location. He said they were in the construction phase and it would be a great facility. He stated Blues Bourbon and Brews participates in the Responsible Vendor Program.

12. **Resolution 2020-11-16-12** for consideration to accept the lowest responsible bid from Reid Construction LLC. for interior restoration of the Operations Building at the Wastewater Treatment Plant

Mr. Bittas stated two bids were received. Reid Construction was the lowest responsible bid for the interior restoration at the due to mold and mildew at the Operations Building at the Wastewater Treatment Plant.

13. **Ordinance No. 135-230** for consideration to amend the Zoning Ordinance of the City of Pelham to include the establishment of Mixed-Use Districts: MX-N Mixed-Use Neighborhood District and MX-C Mixed-Use Center District (First Reading)

There was no discussion or questions from the city council.

14. **Ordinance No. 135-231** for consideration to rezone property located at 96/98 Hilltop Business Center Drive from B-4 (Mini-Warehouse District) to B-2 (General Business District) for applicant Maranatha Properties, LLC (First Reading)

There was no discussion or questions from the city council.

(End of November 16, 2020 Agenda Review)

Adjournment

A motion to adjourn the work session was made by Councilmember Coram and seconded by Councilmember Palmer. The motion passed unanimously by voice vote of those members present, and the work session was adjourned at 6:54 p.m.

Respectfully submitted this 16th day of November 2020,



Tom Seale, MMC, City Clerk/Treasurer



Maurice Mercer, President of the Council

