



Mayor Depreo
Councilmember Maher At-Large
Councilmember Finley Ward 1
Councilmember Moran Ward 2
Councilmember Sheppard Ward 3
Councilmember Clark Ward 4

MINUTES
REGULAR MEETING OF THE CITY COUNCIL
Tuesday, December 07, 2021
6:00 PM CST
Council Chambers, City Hall

Call to Order.

Mayor Depreo called the meeting to order at 6:07 p.m.

Invocation - Councilmember Clark

Pledge of Allegiance

Eagle Scout Thomas Konkel and member of Boy Scout Troup 210 lead the Pledge of Allegiance.

Roll Call

PRESENT

Mayor Nancy Depreo

Councilmember-At-Large Gerard Maher

Ward 2 Alan Moran

Ward 4 Charles Clark

ABSENT

Ward 1 Shane Finley

Ward 3 Ricky Sheppard

Confirm or Adjust Agenda Order

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to amend and approve the agenda as follows:

ADD: Authorize the City Manager to negotiate donation or purchase of parcel 0067N-1-35-047.000 located on Crooked Stick Turnberry Drainage improvements, and

Move Agenda Item14 - **2021-388**: Motion to approve the selection of Orion Planning to serve as consultant for the GRPC/MDOT Grant for wayfinding, navigation and implementation master plan from the Consent Agenda to the Action Agenda.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Presentation Agenda.

Council Comments.

1. The next regularly scheduled meeting of the City Council will be held December 21, 2021 at 6:00 p.m. in City Hall Council Chambers.
2. City Hall will be closed Thursday and Friday December 23 - 24, 2021 in observance of Christmas and Friday, December 31, 2021 in observance of the New Year.

3. Diamondhead Christmas Parade will be Saturday, December 11th starting at City Hall at 1:30 p.m. and traveling the complete circle around Diamondhead Drive (North, West and East).
4. Proclamation honoring Eagle Scout Thomas Konkel.
Mayor Depreo honored Eagle Scout Thomas Konkel for his Eagle Scout achievement. Konkel's project including raising funds and building 10 benches for the dog park and 6 bird houses designed for blue birds.
5. Bobbi Kittle, Employee Benefits Consultant with Hub International - Overview of employee benefits and policy renewals.

City Manager's Report.

1. Land Donation by Casano – There is a resolution on the agenda to accept the donation of land from Mike and Peter Casano for the right of way at the end of Noma Drive for the boat launch project. This will be used for the roadway, boat launch and parking area.
2. Mardi Gras Parade – There is a resolution to ask the City of Waveland to borrow their viewing stands for the Diamondhead Mardi Gras Parade. We have done this for the last couple of years at no cost to the city.
3. Land Purchase from Peoples Bank – At the last meeting, the council authorized the administration to make an offer to purchase 48 parcels from Peoples Bank for \$75K. This offer was accepted by Peoples Bank. This resolution provides authorization for the administration to purchase the land. We hope to close on this property on December 17.
4. GRPC Grant – The city received a \$75K planning grant from GRPC for our wayfinding project. I am recommending Orion Planning and Design as the consultant on this project. There is another agenda item approving the agreement with MDOT for this grant.
5. Bayou Drive Kayak Launch – There is a new work assignment with Chinichi Engineering for rebuilding the kayak launch that was destroyed by the storms. This is only rebuilding the kayak launching area since the main pier was not damaged.
6. Covington Engineering Work Assignment – There is a new work assignment for Covington Engineering to survey the ditch and rear property lines on Kome Drive. This is related to ditch erosion and to see if the ditch is expanding outside of the drainage easement in this area.
7. Cost of Living Salary Increase for Employees – After discussion by the council at the last meeting, I am recommending a 3% cost of living increase for all employees effective January 3, 2022. Everyone is experiencing the drastic increases in cost of living at this time. This is having a major impact on employees. The council asked the administration to look at this option. The increase cost is about \$30K annually. If the council decides to approve this recommendation, the administration will prepare the order for salaries and any necessary budget amendments at the next meeting.

Public Comments on Agenda Items - None.

Policy Agenda.

Minutes:

1. Motion to approve the November 10, 2021 Recess Meeting Minutes.

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to approve the November 10, 2021 Meeting Minutes.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

2. Motion to approve the November 16, 2021 Regular Meeting Minutes.

Motion made by Councilmember-At-Large Maher, Seconded by Ward 2 Moran to approve the November 16, 2021 Regular Meeting Minutes.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Resolutions:

3. **2021-386:** Motion to adopt Resolution 2021-077 thereby acquiring by Quitclaim Deed/Donation certain real property located within the City from Michael Casano and Peter Casano III and for other related matters.

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to adopt Resolution 2021-077 thereby acquiring by Quitclaim Deed/Donation certain real property located within the City from Michael Casano and Peter Casano III and for other related matters.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

4. **2021-386:** Motion to adopt Resolution 2021-078 requesting from the City of Waveland the use of viewing grandstand for the 2022 Krewe of Diamondhead Parade.

Motion made by Ward 2 Moran, Seconded by Ward 4 Clark to adopt Resolution 2021-078 requesting from the City of Waveland the use of view grandstand for the 2022 Krewe of Diamondhead Parade.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

5. **2021-390:** Motion to adopt Resolution 2021-079 thereby abandoning a 5' drainage/utility easement on each side of the common property line between Lots 14 and 15, Diamondhead Phase 2, Unit 10. Block 19. The physical address is 6529 Kiko Street; parcel numbers are 067N-2-35-133.000 and 067N-2-35-134.000. (Brownell)

Motion made by Ward 4 Clark, Seconded by Ward 2 Moran to adopt Resolution 2021-079 thereby abandoning a 5' drainage/utility easement on each side of the common property line between Lots 14 and 15, Diamondhead Phase 2, Unit 10. Block 19. The physical address is 6529 Kiko Street; parcel numbers are 067N-2-35-133.000 and 067N-2-35-134.000. (Brownell)

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

- 6. **2021-394:** Motion to adopt Resolution 2021-081 authorizing the purchase of lots from the The Peoples Bank and for other related matters.

Motion made by Ward 2 Moran, Seconded by Councilmember-At-Large Maher to adopt Resolution 2021-081 authorizing the purchase of lots as follows from the The Peoples Bank and for other related matters.

| ID | Street | Parcel Number | | Street | Parcel Number |
|----|--------------------|-------------------|----|------------------|--------------------|
| 1 | Anela Place | 068R-3-41-096.000 | 25 | Lilinoe Place | 067F-1-26-027.000 |
| 2 | Anoai Way | 131B-0-01-090.000 | 26 | Lilinoe Place | 067G-1-25-273.000 |
| 3 | Applehama Road A | 068R-2-41-038.000 | 27 | Limu Way | 067F-1--26-138.000 |
| 4 | Applehama Road B | 068R-2-41-038.000 | 28 | Lola Court | 068J-1-41-103.000 |
| 5 | Banyan Place | 068R-3-41-023.000 | 29 | Lola Court | 068J-1-41-102.000 |
| 6 | Bayou Drive | 067E-1-26-059.000 | 30 | Lola Drive | 068J-1-41-092.000 |
| 7 | Diamondhead Dr. N. | 068K-0-41-043.000 | 31 | Lola Drive | 068J-1-41-091.000 |
| 8 | Hoaka Lane | 131D-2-13-079.000 | 32 | Lono Place | 067E-2-26-082.000 |
| 9 | Honalo Place | 067H-2-25-315.000 | 33 | Mahalo Hui | 068R-2-41-208.000 |
| 10 | Honalo Place | 067H-2-25-318.000 | 34 | Mahalo Hui | 068R-2-41-207.000 |
| 11 | Ieke Circle | 068J-1-41-140.000 | 35 | Mahalo Hui Drive | 067N-2-35-115.000 |
| 12 | Ieke Circle | 068J-1-41-139.000 | 36 | Makiki Drive | 068J-1-41-040.000 |
| 13 | Ieke Circle | 068J-1-41-138.000 | 37 | Makiki Drive | 068J-1-41-008.000 |
| 14 | Kaena Place | 067G-2-25-090.000 | 38 | Makiki Drive | 068J-1-41-007.000 |
| 15 | Kahala Drive | 068J-3-41-025.000 | 39 | Makiki Drive | 067M-1-35-003.000 |
| 16 | Kaleki Way | 068J-1-41-290.000 | 40 | Makiki Drive | 068J-2-41-062.000 |
| 17 | Kalipekona Way | 132A-1-03-049.000 | 41 | Op La Way | 068J-1-41-062.000 |
| 18 | Kalipekona Way | 132A-1-03-050.000 | 42 | Op La Way | 068J-1-41-033.000 |
| 19 | Kalipekona Way | 132A-1-03-051.000 | 43 | Op La Way | 068J-1-41-065.000 |
| 20 | Kalipekona Way | 132A-1-03-058.000 | 44 | Op La Way | 068J-1-41-066.000 |
| 21 | Koloa St. | 067J-1-36-010.000 | 45 | Op La Way | 067M-1-35-023.000 |
| 22 | Laulini Place | 067F-1-26-097.000 | 46 | Road not named | 067J-1-36-008.000 |
| 23 | Lilinoe Place | 067F-1-26-033.000 | 47 | Road not named | 131D-2-13-074.000 |
| 24 | Lilinoe Place | 067F-1-26-030.000 | 48 | Road not named | 131D-2-13-073.000 |

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

- 7. **2021-395:** Motion to adopt Resolution 2021-080 thereby designating Michael Reso, City Manager as Applicant agent and Jeannie Klein, City Clerk as Alternate Applicant Agent for FEMA/MEMA Federal Declaration DR#4626 (Hurricane Ida).

Motion made by Councilmember-At-Large Maher, Seconded by Ward 4 Clark to adopt Resolution 2021-080 thereby designating Michael Reso, City Manager as Applicant agent and Jeannie Klein, City Clerk as Alternate Applicant Agent for FEMA/MEMA Federal Declaration DR#4626 (Hurricane Ida).

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Consent Agenda:

Motion made by Ward 4 Clark, Seconded by Councilmember-At-Large Maher to approve the following agenda items by consent:

- 8. **2021-379:** Motion to accept substantial completion as of November 17, 2021 for the NRCS Channel Stabilization project at Diamondhead Drive East and Alkii Way.

9. **2021-380:** Motion to approve payments to Pickering Firm for professional services related in the amount of \$5,597.50 for Makiki Culvert Replacement and \$3,042.50 and \$8,155.00 for the NRCS Channel Stabilization Diamondhead Drive East and Alkii Way.
10. **2021-381:** Motion to approve payments to AshBritt Environmental in the amount of \$61,882.10 for debris hauling and \$19,789.83 for landfill tipping fees all related to Hurricane Ida recovery.
11. **2021-382:** Motion to approve payment to Machado Patano in the amount of \$1,000 for professional services relating to City Hall Parking Lot renovations.
12. **2021-383:** Motion to approve payment to Covington Civil & Environmental in the amount of \$57,800 for professional services relating to the the Commercial District Transformation Project.
13. **2021-385:** Motion to accept and approve existing renewals from Blue Cross Blue Shield of Mississippi with Morgan White (major medical and deductible buy back) and Guardian (life, dental and vision) and employee benefits insurance renewals for calendar year 2022.
15. **2021-389:** Motion to approve payments to Chiniche Engineering & Surveying in the amount of \$2,435.00 for Montjoy Creek Improvements and \$2,934.72 for Noma Drive Improvements.
16. **2021-391:** Motion to approve Master Service Agreement Work Assignment Chiniche Engineering & Surveying in the amount \$8,000 for professional services relating to the modification to the Bayou Drive Kayak Launch.
17. **2021-392:** Motion to authorize the administration to expend funds for a Christmas Parade to be held on December 11, 2021 at 1:30 as an alternative to the City's traditional Christmas on the Town Green event.
18. **2021-393:** Motion to approve and accept the terms of the Memorandum of Agreement with MDOT for the Wayfinding Grant and authorize the execution of same.
19. **2021-396:** Motion to approve the State-Local Disaster Assistance Agreement with the State of Mississippi and Mississippi Emergency Management Agency for Hurricane Ida (FEMA-4626-DR MS)
20. **2021-397:** Motion to approve payments to Digital Engineering for professional services in the amount of \$2,000 for Roadway Improvements Project Phase 3 and \$2,610 for GIS Maintenance.
21. **2021-398:** Motion to approve Pay Application No. 6 in the amount of \$82,675.21 to ERS, Inc. for the NRCS Channel Stabilization Project at Diamondhead Drive at Alkii Way.
22. **2021-399:** Motion to approve a 3% salary increase for all employees and further to authorize the administration to prepare an order and necessary budget amendments for same.
23. **2021-400:** Motion to approve Master Service Agreement Work Assignment in the amount of \$2,000 with Covington Civil & Environmental for Kome Drive Ditch Survey.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Action Agenda.

23. a (14) 2021-388: Motion to approve the selection of Orion Planning to serve as consultant for the GRPC/MDOT Grant for wayfinding, navigation and implementation master plan.

Motion made by Councilmember Ward 2 Moran, Seconded by Ward 4 Clark to approve the selection of Orion Planning to serve as consultant for the GRPC/MDOT Grant for wayfinding, navigation and implementation master plan.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Routine Agenda.

Claims Payable

24. Motion to approve the Docket of Claims (DKT159079- DKT159127 and DKT159129-DKT159142) in the amount of \$398,474.65.

Motion made by Ward 2 Moran, Seconded by Councilmember-At-Large Maher to approve the Docket of Claims (DKT159079- DKT159127 and DKT159129-DKT159142) in the amount of \$398,474.65.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

25. Motion to approve Docket of Claims (DKT159143) in the amount of \$77,800.00.

Motion made by Ward 2 Moran, Seconded by Ward 4 Clark to approve Docket of Claims (DKT159143) in the amount of \$77,800.00.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Mayor Depreo requested the Attorney General’s Opinion dated November 30, 2021 received in response to her request regarding the expenditure of public funds to campaign on a non-binding referendum be spread upon the minutes.

Public Comments on Non-Agenda Items.

Larry Mitrengo of Postwood Homes- Stormwater Ordinance citation.

Adjourn/Recess.

At 7:28 p.m. with no further business to come before the Council, motion was made by Ward 4 Clark, seconded by Ward 2 Moran.

Voting Yea: Mayor Depreo, Councilmember-At-Large Maher, Ward 2 Moran, Ward 4 Clark

MOTION CARRIED UNANIMOUSLY

Nancy Depreo
Mayor

Jeannie Klein
City Clerk



November 30, 2021

The Honorable Nancy Depreo
Mayor, City of Diamondhead
5000 Diamondhead Circle
Diamondhead, Mississippi 39525-3260

Re: Use of Public Funds to Promote Non-binding Referenda

Dear Mayor Depreo:

The Office of the Attorney General has received your request for an official opinion.

Issue Presented

May the City of Diamondhead expend funds to promote a non-binding referendum? Pursuant to our discussions by phone clarifying the matters at issue in your request, we do not answer the remaining questions as they relate to past action and/or to duties not relevant to your office.

Brief Response

The City of Diamondhead may not lawfully expend municipal funds to promote non-binding referenda, where such promotion is meant to influence the outcome of the referenda.

Applicable Law and Discussion

Mississippi Code Annotated Section 7-5-25 authorizes the Attorney General to issue official opinions to various public officials and bodies "upon any question of law relating to their respective offices." This office cannot "provide opinions to one entity [or individual] regarding duties of another . . ." MS AG Op., *Criswell* at *1 (Aug. 26, 2016). Therefore, we are unable to respond by official opinion to your questions regarding the authority of other local entities. Moreover, this office may only opine on prospective questions of law. An Attorney General's opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Thus, we offer this opinion for future guidance.

Both the Mississippi Supreme Court and this office have found that public entities cannot expend public funds to influence the outcome of an election. In *Smith v. Dorsey*, 599 Sd. 529, 535 (Miss. 1992), the court found that there is nothing in our state's statutory or common law that would authorize a public entity's use of public funds to actively campaign for a favored position on a

Mayor Nancy Depreo
November 30, 2021
Page 2

bond issue or, similarly, to actively campaign against it. The court further stated that a school board may, however, spend funds to inform the community in a fair presentation of both sides of the issue of a proposed bond referendum but may not spend funds to influence the outcome of the election, finding that “in a nutshell, the school board can inform, but not persuade.” *Id.* at 542. Citing the court’s language in *Smith*, our office has found that a county board of supervisors “or any other public body, may not use public funds to advocate for or against the question of whether to sell or lease the Hospital with an option to sell.” MS AG Op., *Trainer* at *3 (July 28, 2017).

Accordingly, this office is of the opinion that the City of Diamondhead may not lawfully expend municipal funds to promote non-binding referenda, where such promotion is meant to influence the outcome of the referenda.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION