

MARCH 15, 2011

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, March 15, 2011.

1. Roll call showed:

Present - Commissioner Gary P. Eliopoulos
Commissioner Adam Frankel
Mayor Nelson S. McDuffie

Absent - Commissioner Fred B. Fetzner
Commissioner Angeleta E. Gray

Also present were - David T. Harden, City Manager
Brian Shutt, City Attorney
Chevelle D. Nubin, City Clerk

2. The opening prayer was delivered by Father William "Chip" Stokes with St. Paul's Episcopal Church.

3. The Pledge of Allegiance to the flag of the United States of America was given.

4. **AGENDA APPROVAL.**

Mayor McDuffie stated staff has requested to remove **Item 8.Q.4., Award of Bids and Contracts.**

The City Manager requested that **Item 9.D., Renewal of Property and Casualty Insurance Broker's Contract** of the Regular Agenda be removed.

Mayor McDuffie also requested that **Item 9.A., Consideration of an Appeal/The Electric Experience,** of the Regular Agenda be postponed to the meeting of April 5, 2011.

Mr. Frankel moved to approve the Agenda as amended, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

5. **APPROVAL OF MINUTES:**

Mr. Eliopoulos moved to approve the Minutes of the Regular Meeting of March 1, 2011, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

Mr. Frankel moved to approve the Minutes of the Workshop Meeting of March 8, 2011, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

6. PROCLAMATIONS:

6.A. Water Conservation Month – April 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming the month of April 2011 as Water Conservation Month. Randal Krejcarek, City Engineer, came forward to accept the proclamation and gave a few brief comments.

6.B. Fair Housing America Month – April 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming the month of April as Fair Housing Month. Lula Butler, Director of Community Improvement, came forward to accept the proclamation and gave a few brief comments.

7. PRESENTATIONS:

None.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. REQUEST FOR SIDEWALK DEFERRAL/1011 SEAGATE DRIVE: Approve a request to defer the installation of a sidewalk along Seagate Drive for the property located at 1011 Seagate Drive.

8.B. SERVICE AUTHORIZATION NO. 07-15.2/MATHEWS CONSULTING, INC.: Approve Service Authorization No. 07-15.2 with Mathews Consulting, Inc. in the amount of \$4,767.00 for the design of S.W. 12th Avenue/Auburn Avenue/S.W. 14th Avenue Improvements Project. Funding is available from 334-3162-541-68.04 (General Construction Fund: Other Improvement/S.W. 12th Avenue/Auburn/14th Avenue).

8.C. SERVICE AUTHORIZATION NO. 07-13.2 /MATHEWS CONSULTING, INC./ RECLAIMED WATER EXPANSION – AREA 11B: Approve Service Authorization No. 07-13.2 with Mathews Consulting, Inc. in the amount of \$14,972.00 for construction management and inspection services relating to the Area 11B Reclaimed Water System project. Funding is available from 441-5181-536-65.96 (Water and Sewer Fund: Other Improvements/Reclaim Water Transmission).

8.D. PAYMENT OF INVOICE/ CITY OF BOCA RATON: Approve payment to the City of Boca Raton in the amount of \$25,988.85 for water used through our interconnect during emergency repair of the 36” Raw Water Main at S.W.

10th Street and 15th Avenue. Funding is from 441-5122-536-34.90 (Water & Sewer Fund: Other Contractual Services).

8.E. CONTRACT CONTINGENCY EXPENDITURE/B & O CONSTRUCTORS, INC./HISTORIC SUSAN B. WILLIAMS HOUSE: Approve a Contract Contingency Expenditure with B & O Constructors, Inc. in the amount of \$2,643.11 for the Historic Susan B. Williams House project. Funding is available from the contract contingency allowance.

8.F. INDEPENDENT CONTRACTOR AGREEMENT/ROBERT BRAND: Approve renewal of an Independent Contractor Agreement between the City and Robert Brand to conduct background investigations for prospective candidates for police officer and non-sworn police employment. Funding is available from 001-2111-521-34.90 (General Fund: Other Contractual Services).

8.G. INDEPENDENT CONTRACTOR AGREEMENT/HOWARD SCOTT LUNSFORD: Approve renewal of an Independent Contractor Agreement between the City and Howard Scott Lunsford to conduct background investigations for prospective candidates for police officer and non-sworn police employment. Funding is available from 001-2111-521-34.90 (General Fund: Law Enforcement/Professional Services/Other Professional Services).

8.H. D.U.I. GRANT APPLICATION/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT): Provide authorization to submit a grant application to the Florida Department of Transportation in the amount of \$22,352.00 to continue the implementation of a Driving Under the Influence (D.U.I.) Enforcement program. Matching funds to be available from various Police Department accounts.

8.I. FUNDING AGREEMENT/DELRAY YOUTH VOCATIONAL CHARTER SCHOOL: Approve a Funding Agreement with Delray Youth Vocational Charter School in the amount of \$15,000.00 for two (2) Social Workers to provide counseling services under the Weed & Seed Program (now known as the Coalition for Community Renewal). Funding is available from 101-2137-521-83.01 (ARRA Economic Stimulus FD: Other Grants & Aids).

8.J. FUNDING AGREEMENT/CHILDREN LEARNING AFTER SCHOOL SESSIONS (C.L.A.S.S.): Approve a Funding Agreement between the City and Children Learning After School Sessions (C.L.A.S.S.) in the amount of \$15,000.00 to provide academic enrichment to local students under the Weed & Seed Program (now known as the Coalition for Community Renewal). Funding is available from 101-2137-521-83.01 (ARRA Economic Stimulus FD: Other Grants & Aids).

8.K. FUNDING AGREEMENT/GULFSTREAM GOODWILL INDUSTRIES: Approve a Funding Agreement between the City and Gulfstream Goodwill Industries in the amount of \$44,160.00 to support ex-offenders returning to targeted neighborhoods within the City under the Weed & Seed Program (now known as the Coalition for Community Renewal). Funding is available from 101-2137-521-83.01

(ARRA Economic Stimulus FD: Other Grants & Aids).

8.L. RESOLUTION NO. 10-11: Approve Resolution No. 10-11 assessing costs for abatement action required to remove nuisances on 20 properties throughout the City.

The caption of Resolution No. 10-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PURSUANT TO CHAPTER 100 OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, ASSESSING COSTS FOR ABATING NUISANCES UPON CERTAIN LAND(S) LOCATED WITHIN THE CITY OF DELRAY BEACH AND PROVIDING THAT A NOTICE OF LIEN SHALL ACCOMPANY THE NOTICE OF ASSESSMENT; SETTING OUT ACTUAL COSTS INCURRED BY THE CITY TO ACCOMPLISH SUCH ABATEMENT AND LEVYING THE COST OF SUCH ABATEMENT OF NUISANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR A DUE DATE AND INTEREST ON ASSESSMENTS; PROVIDING FOR THE RECORDING OF THIS RESOLUTION, AND DECLARING SAID LEVY TO BE A LIEN UPON THE SUBJECT PROPERTY FOR UNPAID ASSESSMENTS.

(The official copy of Resolution No. 10-11 is on file in the City Clerk's office.)

8.M. SECOND AMENDMENT TO THE DECLARATION OF RESERVED RIGHTS AND AGREEMENT NOT TO ENCUMBER N.E. 7TH AVENUE RELATED TO THE ATLANTIC PLAZA PROJECT: Approve the Second Amendment to the Declaration of Reserved Rights and Agreement not to Encumber N.E. 7th Avenue regarding the abandonment and relocation of N.E. 7th Avenue between N.E. 1st Street and East Atlantic Avenue to extend the time to obtain site plan certification by ninety days.

8.N. WORKFORCE HOUSING COVENANT WITH ALTA CONGRESS OWNER, LLC.: Approve a Workforce Housing Covenant between the City and Alta Congress Owner, LLC., developer of the Alta Congress development.

8.O. SERVICE AUTHORIZATION NO. 17.1/SPATIAL FOCUS, INC.: Approve Service Authorization No. 17.1 with Spatial Focus, Inc. in the amount of \$4,250.00 for technical assistance related to the SunGard Public Safety software project. Funding is available from 334-2111-521-31.90 (General Construction Fund: Professional

Services/Other Professional Services).

8.P. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD

ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period February 28, 2011 through March 11, 2011.

8.Q. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to All Phase Roofing & Construction, Inc. in the amount of \$101,493.00 for the following three (3) NSP Housing Rehabilitation projects through the Community Development Division: 2707 S.W. 2nd Street, 518 S.W. 9th Court and 310 Southridge Road. Funding is available from 118-1934-554-62.12 (Neighborhood Services: Capital Outlay/Acquisition Rehabilitation) and 118-1935-554-62.12 (Neighborhood Services: Capital Outlay/Acquisition Rehabilitation).
- 2.** Purchase award to Americas Generators in the amount of \$54,642.00 for a 200 kilowatt backup generator. Funding is available from 442-5178-536-64.90 (Water and Sewer Renewal & Replacement Fund: Machinery/Equipment/Other Machinery/Equipment).
- 3.** Purchase award to Florida Bullet, Inc. in the amount of \$71,405.20 for the purchase of ammunition. Funding is available from 001-2111-521-52.20 (General Fund: Operating Supplies/General Operating Supplies) and 001-2115-521-52.19 (General Fund: Operating Supplies/SWAT Expenditures).
- 4. THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.**

Mr. Eliopoulos moved to approve the Consent Agenda as amended, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

9. REGULAR AGENDA:

9.A. THIS ITEM HAS BEEN POSTPONED TO A DATE CERTAIN OF APRIL 5, 2011.

9.B. RECONSIDERATION OF CREATIVE CITY COLLABORATIVE (CCC) REQUEST TO WAIVE COSTS: Reconsider a request from the Creative City Collaborative to waive reimbursement to the City for printing and mailing costs, estimated to be \$4,170.00 for three (3) quarters, to include a solicitation in utility bills for voluntary donations to cultural programs.

Jay Alperin, Vice President of the Creative City Collaborative (CCC), introduced the Creative City Collaborative Board and stated they are developing a very talented and enthusiastic Board.

Alyona Ushe, Executive Director of the Creative City Collaborative, (CCC), gave a brief PowerPoint presentation and stated the mission of the CCC is to build and promote the culture community in Delray Beach. Ms. Ushe stated their vision is to be the instrument for Delray Beach as an international culture destination, atrium, and artists. Ms. Ushe stated as a public/private partnership the CCC is tasked with launching two venues (i.e. arts garage and warehouse).

Mr. Eliopoulos stated he requested that this item be brought back to the Commission because he does not feel that the presentation was as well thought out. He stated the information tonight is showing the Commission what the CCC is trying to do and should be the key for all the organizations. Mr. Eliopoulos stated the Commission needs to know not only what the mission is but how you are getting to that mission. He stated he would like to see how the CCC plans on raising money and would like to see the CCC become more sustainable. Mr. Eliopoulos stated the last time this item was discussed his concern was the City is hurting for money and if we say yes to one person how do we stop from saying yes to everybody.

Mr. Frankel concurred with comments expressed by Commissioner Eliopoulos. Mr. Frankel stated the City has to be fiscally responsible and commended the CCC on their presentation, fundraising and programming.

Mayor McDuffie briefly discussed the operating budget and stated it is very difficult to dole out unbudgeted money in the face of asking some of our employees to give the City money back that the City has been giving them for years. He stated the presentation tonight was very well done. Mayor McDuffie stated he stood by John McEnroe and handed him two pieces of art at the Arts Garage and it was phenomenal.

Dr. Alperin stated the CCC requires all their Board members to be contributors of a required amount and they are all responsible for raising more.

The City Attorney announced that since there are only three (3) Commissioners present, all three Commissioners will have to vote in the affirmative otherwise an item does not pass.

Mr. Eliopoulos moved to approve the Creative City Collaborative (CCC) request to waive costs with the City to receive half the proceeds until we get back half of what it costs to do the mailing, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

9.C. GRANT AGREEMENT WITH PALM BEACH COUNTY & EXPANDING AND PRESERVING OUR CULTURAL HERITAGE, INC. (EPOCH); C. SPENCER POMPEY AMPHITHEATER: Consider a Grant Agreement between Palm Beach County, the City, and EPOCH; and a commitment to provide supplemental funding in the amount of \$310,000.00 for redesign and construction of the proposed C. Spencer Pompey Amphitheater on the Spady Cultural Heritage Museum grounds. Funding to be programmed in the 2011/2012 Capital Improvement Plan.

1. AMENDMENT NO. 3 TO THE LEASE AGREEMENT/SPADY CULTURAL MUSEUM: Consider approval of Amendment No. 3 to the Lease Agreement with Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH) regarding the Spady House Multicultural Museum Properties; contingent upon approval of the Grant Agreement with Palm Beach County.

The City Manager stated when this was presented to the Commission previously the Commission was concerned about the ability of Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH) to raise money and they indicated they were doing some strategic planning and had a consultant on board to do some work on their fundraising efforts and their sustainability to create a model business plan that should be finished during the summer. Gladys Whigham from Commissioner Taylor's office has indicated that the County would allow the City until July to sign the agreement. The City Manager suggested that the Commission table this pending receipt of the operational plan from EPOCH at which time the Commission can make a decision about whether to approve the agreement or not.

Daisy Fulton, Executive Director of the Spady Museum, stated EPOCH's 2005 Strategic Planning Valuation is being administered and reviewed, Strategies for Non-Profits 2011 Strategic Plan is being administered by consultant, and their business plan is being administered. Ms. Fulton stated all consultant services are underway and the target completion date is April 29, 2011. Ms. Fulton stated EPOCH's annual budget is \$550,494.00 and they have secured 58% of that budget thus far with 42% remaining. She stated pending approvals for grants EPOCH has close to \$400,000.00 in grants waiting for approval. Ms. Fulton stated that EPOCH receives 6% from the City toward EPOCH's operating budget which represents \$31,000.00 and 33% from the Community Redevelopment Agency (CRA) which represents \$182,310.00. She stated EPOCH has identified over 30 new prospects as far as funding opportunities. Ms. Fulton stated the other revenue sources are the gift shop, the museum admission, contributions, individual giving, corporate sponsors, annual giving, membership fundraising, etc. In addition, Ms. Fulton stated EPOCH is pursuing social entrepreneurship fundraising with their fundraising consultant. She stated EPOCH is aggressively working toward identifying and bringing in additional funds and over time they want to take a look at decreasing their dependency on the City and the CRA dollars. Ms. Fulton commented about the Munnings Cottage that is being reconstructed and stated

it would represent a 1% increase in EPOCH's budget this year (\$3,100.00). She stated they are looking at occupancy and programming as early as a May timeframe. Ms. Fulton stated with the Muse property and the Munnings Cottage coming on board next year the operational costs will run EPOCH approximately \$30,000.00.

Mr. Frankel thanked Ms. Fulton for the update.

Ms. Fulton requested that once the business plan, strategic plan, and the assessment is completed EPOCH's goal is to make that happen earlier than the July timeframe.

Mr. Eliopoulos thanked Ms. Fulton for the update. Mr. Eliopoulos stated his concern is the accountability and making things work. He encouraged every organization to do what EPOCH is doing and that is to get a plan together and try to become more sustainable.

Mayor McDuffie stated we have to be accountable to the taxpayers of Delray Beach. He applauds EPOCH for what they have done thus far.

Ms. Fulton clarified that at the last presentation it was stated that the CRA has funded up to 70% of EPOCH's budget but EPOCH is now down to 33% regarding CRA funding.

Mr. Frankel moved to table **Item 9.C.**, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

Mr. Eliopoulos moved to table **Item 9.C.1.**, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

9.D. THIS ITEM HAS BEEN REMOVED FROM THE AGENDA.

9.E. SERVICE AUTHORIZATION NO. 07-21/MATHEWS CONSULTING, INC./AUTOMATIC METER READ SYSTEM (AMR) EVALUATION: Consider approval of Service Authorization No. 07-21 to Mathews Consulting, Inc. in the amount of \$65,612.00 for professional services in conducting a Water Meter Automatic Meter Read (AMR) System Evaluation. Funding is available from 441-5181-536-31.90 (Water and Sewer Fund: Professional Services/Other Professional Services).

Randal Krejcarek, City Engineer, stated this is a Service Authorization to Matthews Consulting, Inc. to do a detailed study and come up with a recommendation. Mr. Krejcarek stated staff is asking for a Master Plan for the Meter Reading. He stated staff wants to be able to take advantage of the best technology that is available. Mr. Krejcarek stated they will take a look at the City's current process and how the City is

reading the meters and maintaining them. He stated they are also going to come up with goals as far as staff is concerned and talk to the cross section of staff. Mr. Krejcarek stated they will also look at what options are available and see what other utilities are using the different technologies that are available. He stated they have scheduled two site visits with staff to see the meter reading operation. Mr. Krejcarek stated they will also do a detailed cost analysis and will look at the capital costs, operating costs, readers per day, service calls per day, and they will do a detailed cost benefit analysis and develop a matrix so that they can compare the different meters. Mr. Krejcarek stated once this is done then they will present staff with the Master Plan that summarizes all the information that they have collected and tested. Staff recommends approval of Service Authorization to Matthews Consulting, Inc.

Mr. Eliopoulos asked why we need to hire someone to tell us we should be doing this work. Mr. Krejcarek stated different technologies can benefit different utilities in different ways. Mr. Eliopoulos stated he thought if there were three types out there then the City would have an RFP and would have different people reviewing it. Mr. Eliopoulos stated it does not seem logical to go this route.

Mr. Frankel stated this does not seem logical to him.

The City Manager stated the City is currently using some radio reads on the beach now where the vehicle drives down the road and the meters are read as it is driving by. He stated there are also systems where you sit in your office and you radio read all the meters in the City without having to drive by.

Mr. Eliopoulos suggested that Mathews Consulting, Inc. give a presentation to the entire Commission and then make a decision.

Mr. Frankel stated this is a lot of money.

Mayor McDuffie asked if staff is looking at the same type of meter throughout the City or are we looking at different technologies in the future and different locations in the City. Mr. Krejcarek stated the City currently has two different technologies that we are trying to support and the goal is to have one system.

Mr. Eliopoulos moved to table this item, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

9.F. APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD: Appoint one (1) regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2011. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Due to her absence, Commissioner Gray's appointment has been deferred to the next regular meeting of April 5, 2011.

9.G. APPOINTMENT TO THE CIVIL SERVICE BOARD: Appoint one (1) regular member to the Civil Service Board to serve a two (2) year term ending April 1, 2013. Based upon the rotation system, the appointment will be made by Commissioner Fetzer (Seat #2).

Due to his absence, Commissioner Fetzer's appointment has been deferred to the next regular meeting of April 5, 2011.

9.H. APPOINTMENTS TO THE FINANCIAL REVIEW BOARD: Appoint two (2) regular members to the Financial Review Board to serve unexpired terms ending July 31, 2011 and one (1) regular member to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointments will be made by Commissioner Gray (Seat #4), Mayor McDuffie (Seat #5) and Commissioner Eliopoulos (Seat #1).

Due to her absence, Commissioner Gray's appointment has been deferred to the next regular meeting of April 5, 2011.

Mayor McDuffie stated he wished to appoint Peter Arts as a regular member to the Financial Review Board to serve an unexpired term ending July 31, 2011. Mr. Frankel so moved, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

Mr. Eliopoulos moved to reappoint Martin Cherry as a regular member to the Financial Review Board to serve an unexpired term ending July 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

At this point, the time being 6:54 p.m., the Commission moved to **Item 11.A., City Manager's response to prior public comments and inquiries.**

11.A. City Manager's response to prior public comments and inquiries.

The City Manager stated at the last meeting Marie Victorin expressed concern about the time it was taking to get permits for her interior alteration project for a business on the recently annexed area on the northwest corner of Military Trail and Atlantic Avenue. The City Manager stated her General Contractor submitted her permit application on February 2, 2011 and the application is routed to eight different City personnel for review. The City contacted the contractor on February 25, 2011 regarding deficiencies with the submission and he did not respond to the call until March 2, 2011 the day after Ms. Victorin attended the Commission meeting. Although the building file was missing a required mechanical permit application the City issued the building permit on March 9th with a hold on it so Ms. Victorin's contractor could begin work. However,

construction will have to stop at the framing stage until a mechanical permit is issued and the City has informed Ms. Victorin of this hold. The City Manager stated the City has also informed Ms. Victorin that she needed to obtain a Business Tax Receipt in the City for her new businesses although she has one already for Palm Beach County.

Secondly, the City Manager stated Christina Morrison Pearce expressed concern about the proposal to acquire additional land to expand the Teen Center park area and mentioned that 14% of the City's total expenses were Parks and Recreation and it had increased where other departments had decreased. The City Manager stated it shows up in the report that way because Parks and Recreation was combined with the tennis stadium and the tennis centers. The Parks and Recreation budget between 2010 and 2011 went down approximately 3%; the tennis budget went up because of the addition of the Champions Tour cost. The City Manager stated the picture that Ms. Pearce got from the City's report is misleading as far as the operation of the City's Parks facilities.

At this point, the time being 6:57 p.m., the Commission moved to **Item 11.B., Comments and Inquiries on Non-Agenda Items from the Public.**

11.B. From the Public.

11.B.1. Matthew Sclier, 18 Grove Way, Delray Beach, FL 33444, expressed concern over the garbage in the City other than the downtown area and stated it is becoming a bigger problem.

Secondly, Mr. Sclier stated off Swinton Avenue he hears a lot of bass coming from car stereos and noted they are not people from the neighborhood. He stated it is out of control and at 2:00 a.m. the noise from the car stereos is going right through windows. Mr. Sclier stated Code Enforcement is open for suggestions and he feels that adding speed bumps and removing bus stops every five feet on Swinton Avenue may help to deter crime in this area.

11.B.2. Dr. Victor Kirson, 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated the City took \$650,000.00 from Fire and Paramedics and was attempting to take \$1.4 million from the Sergeants and Police Officers. He stated the City is also trying to reduce the amount of protection that he, his association, and the residents are getting by reducing the shift hours from 84 to 80 hours. Dr. Kirson stated this takes money away from them and takes protection away from him especially when crime is so high.

At this point, the time being 7:00 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 04-11 (FIRST READING/FIRST PUBLIC HEARING): Privately initiated amendment to the Land Development Regulations

(LDR) Section 4.4.13, "Central Business District", Subsection (D), "Conditional Uses and Structures Allowed", to add "Escorted Segway Tours" as a conditional use and amending Section 4.3.3, "Special Requirements for Specific Uses", to enact a new Subsection (ZZZZ), "Segway Tours and Segway Sales", to provide specific requirements for establishment and operation of such uses; and amending Appendix "A", "Definitions". If passed, a second public hearing will be held on April 5, 2011.

The caption of Ordinance No. 04-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT", SUBSECTION 4.4.13(D), "CONDITIONAL USES AND STRUCTURES ALLOWED"; BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," BY ENACTING A NEW SUBSECTION (ZZZZ), "SEGWAY TOURS AND SEGWAY SALES"; AND BY AMENDING APPENDIX "A", "DEFINITIONS", TO ESTABLISH REGULATIONS FOR SEGWAY TOURS AND SEGWAY SALES AND TO PROVIDE FOR A DEFINITION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE (EPAMD); PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 04-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a privately initiated text amendment to LDR Section 4.4.13(D)(22)[Central Business District], Section 4.3.3(ZZZZ) [Requirements for Specific Uses] and Appendix "A", "Definitions". The amendment is to allow tour operators and sales of human transporters commonly known as "Segways". The proposed text amendment also provides specific requirements that apply to operations and provides distances between similar businesses. This privately initiated LDR text amendment would add these tours as a conditional use in the CBD (Central Business District) subject to special regulations. The proposed special regulations under which the use should operate are an attempt to address and mitigate any concerns including potential nuisance and safety issues. It is noted that this amendment is separate from Ordinance No. 05-11 as proposed by the City Attorney

which addresses EPAMD use citywide. This citywide ordinance will also apply to private EPAMD's use, EPAMD rental/lease uses as well as escorted EPAMD tour uses. The proposed text amendment has a limited number of special regulations and is noted as Version #1 (Applicant's version). During the text amendment review staff recommended additional regulations be applied and is attached as Version #2. Mr. Dorling stated the notable difference between the applicant's version and staff's version is the provision that prohibits tours on the east side of A-1-A as well as provisions that require minimum age and weight for riders. Tour operators would be allowed to operate on the west side of A-1-A, except for one block north and south of Atlantic Avenue. Mr. Dorling stated it is staff's position that the unsafe situation would be created by introducing tours on the east side of A-1-A where there is competing traffic such as pedestrian, bicycles, skateboards, and the like. It is also noted that the citywide segway ordinance would also prohibit segways on the east side of A-1-A and exclude non-tour operators those operating rentals and private machines from both sides of A-1-A (Ordinance #05-11). Mr. Dorling stated there are some restrictions on other congested areas that staff is recommending and the applicant has agreed to most of those including Atlantic Avenue from A-1-A to I-95 and Pineapple Grove from Atlantic Avenue to N.E. 3rd Street. The applicant's version differs a little bit with that and says for Pineapple Grove in its entirety.

Mr. Dorling stated this was reviewed by the Community Redevelopment Agency (CRA), West Atlantic Avenue Redevelopment Coalition (WARC), Downtown Development Authority (DDA), Pineapple Grove Main Street (PGMS), and the Planning and Zoning Board. At its meeting of January 24, 2011, the Planning and Zoning Board considered the proposed text amendment and felt that staff's version was too restrictive and that the special regulations section should be something that should be taken care of in the conditional use process. The CRA had several concerns and considered it twice and came back to them on March 10, 2011 at which time the applicant indicated that he was okay with staff's version at that point and the only contention they had was on the east side of A-1-A which was outside the district and therefore agreed to recommend approval. At its meeting of January 10, 2011 and March 14, 2011, the DDA considered this ordinance. Mr. Dorling stated yesterday the DDA agreed with the latest version (staff's version) with the exception that they thought the restriction on A-1-A should be limited to both sides of the CBD (Central Business District) which is one block north and south of Atlantic Avenue. Mr. Dorling stated he recommends approval of staff's version. He stated there is another recommendation that portions of the ordinance g-x which are part of the City's version should be pulled out of both the applicant's version and the City's version and left to the overall citywide ordinance. Mr. Dorling stated if that is done that would mean that staff's version would only contain a-f and that g-x which deals with more of the operation of the use and would be adopted through the citywide ordinance.

The City Manager stated what the Commission has in front of them with the red print is the applicant's version and what is in red is how the Commission would need to amend the applicant's version in order to incorporate staff's comments.

Mayor McDuffie declared the public hearing open.

Michael Listick, 190 S.E. 5th Avenue, Delray Beach, FL 33483 (Attorney representing Applicant), stated he agrees with 99.9% of what the final ordinance is. Mr. Listick stated he met with staff and came up with restrictions to make sure that public safety was protected. He stated when they drafted the ordinance based on that conversation staff came up with some additional requirements that they thought were necessary for public safety. Mr. Listick expressed concern over the safety along A-1-A and stated there are some things in the restrictions that are unnecessary; however, they can accept those.

Andy Katz, 220 South Ocean Boulevard, Delray Beach, FL 33483 (speaking on behalf of Beach Property Owners Association (BPOA)), stated some of the comments from the BPOA is that the sidewalks on A-1-A are overused and this is just another burden and there were other comments that this was not a bad idea. Mr. Katz stated we have all kinds of other uses on the A-1-A sidewalk specifically the eastern sidewalk and some of those uses are bicycles, skateboards and motorized skateboards, rollerblades, mothers and fathers with racing strollers, unicycles, and a guy with the bagpipe. Mr. Katz stated this all adds to city life as long as it does not become a problem. He stated we have had other things on the beach itself where we have decided as a city that some things will not be allowed in the majority of the beach but will be allowed in restricted areas like the recreational areas. Mr. Katz stated the BPOA would like to make sure that a reasonable speed limit is considered, wherever there are bike shoulders that the guided tours use those and if they cannot then the sidewalk needs to be used but the speed limit should be there and that they be in a single file. Mr. Katz stated the BPOA would like to make sure the conditions that are already being considered also have the reasonable speed limit and the single file operation in preference for the bicycle lanes where they are available.

Mr. Listick stated it is a good idea to add that bicyclists be in a single file in the ordinance. He stated with regard to speed the ordinance states 6 mph as a maximum along the beach and 12 mph anywhere else. Mr. Listick stated a reasonable casual walk is 4 mph. Mr. Listick stated as an additional safety measure and although everyone has agreed to 6 mph, it could be lowered to 4 mph to be the same speed as a walker. Mr. Listick stated he noticed one block going north goes all the way to Thomas Street which is almost three blocks and at the next meeting he will suggest that instead of going north one block to Thomas Street that it stop at the end of the Marriott. He stated on the other side going south it is one block to Miramar and that is reasonable but at the same time the DDA said that you do not have to do that because there are residences going south so they said ban them from the side of the Marriott to the end of Boston's. Mr. Listick stated this makes sense because it is consistent with the CBD (Central Business District). Mr. Listick noted that at one of the meetings the Police Department was talking about safety and stated on the east side at the north end of A-1-A there is a double sidewalk and asked why we are banning it there. Mr. Listick stated on the west side there is no sidewalk.

Alice Finst, 707 Place Tavant, Delray Beach, FL 33445, stated before the meeting she read the backup information on Item 9.A. and then read the information

on this ordinance. Mrs. Finst suggested that at the next presentation staff narrow this down to one page so that it would be useful to hand out to people who are renting these machines. She suggested that language be put in the ordinance regarding training for these machines and that they not be allowed to train in the alleys but that they train behind their businesses where their parking spaces are. Mrs. Finst expressed concern over the safety issues and stated she would like this to be as safe as possible for everyone.

David Schmidt, 140 N.E. 4th Avenue, Delray Beach, FL 33483 (Attorney representing his client The Electric Experience), stated his client hopes to be renting segways and doing segway tours as well. Mr. Schmidt stated they are in agreement with 99.9% of this ordinance as is Mr. Listick's client and they have the same interest in being able to utilize A-1-A for the tours and as was mentioned on the north end of the beach with a double sidewalk they think this can be accommodated on part of that. Mr. Schmidt stated he and Mr. Listick are going to try and come up with a joint map that would diagram the proposed tour along A-1-A for the next presentation.

Dr. Victor Kirson, 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated this is a business and feels the Commission automatically approves businesses. However, Dr. Kirson stated you cannot regulate people and feels there is currently too much traffic on A-1-A. He stated if segways are approved people will not be able to enjoy what they have been doing the way they are now.

There being no one else from the public who wished to address the Commission regarding Ordinance No. 04-11, the public hearing was closed.

Mr. Eliopoulos stated this is something new and different but safety still trumps everything. He stated he supports staff's recommendations.

Mr. Frankel stated the biggest concern is public safety but does not feel we will be able to enforce the speed limit and that is not a big issue. However, Mr. Frankel stated there are other things that can be put in an ordinance that would contribute to public safety. In his opinion, Mr. Frankel stated segways should not be on any sidewalks and feels that on the streets bike lanes are appropriate. Mr. Frankel stated he would like to see something in the ordinance about how long the training would be and that they wear a bright colored safety vest. Mr. Frankel reiterated that he would like to see something in the ordinance about training, what they are wearing, and does not want to see the segways on the sidewalks.

Mayor McDuffie expressed concern over safety and he wants to make certain that we can get these vehicles to operate safely within the City of Delray Beach. Mayor McDuffie stated he has experienced some problems with cyclists particularly on A-1-A where they take over the roadway. He stated he went to some of the cycling clubs and spoke to the people in charge and they police themselves so a lot of that behavior ceased. Mayor McDuffie stated he has not personally experienced it again and has not had anybody else bring this back to him.

Mr. Eliopoulos moved to approve Ordinance No. 04-11 on First Reading/First Public Hearing (the amended version of the applicant's version that was amended in red by staff), seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

10.B. ORDINANCE NO. 09-11 (FIRST READING/FIRST PUBLIC HEARING): Consider amending the Land Development Regulations (LDR) by amending Sections 4.4.12, "Planned Commercial (PC) District"; 4.4.15, "Planned Office Center (POC) District"; 4.4.21, "Community Facilities (CF) District"; enacting a new Section 4.5.18, "Medical Arts Overlay District", to provide for the creation and implementation of the Medical Arts Overlay District; and amending Appendix "A", "Definitions", of the Land Development Regulations (LDR) to define "Institutional Uses". If passed, a second public hearing will be held on April 5, 2011.

The caption of Ordinance No. 09-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH BY AMENDING SECTIONS 4.4.12, "PLANNED COMMERCIAL (PC) DISTRICT"; 4.4.15, "PLANNED OFFICE CENTER (POC) DISTRICT"; 4.4.21, "COMMUNITY FACILITIES (CF) DISTRICT"; ENACTING A NEW SECTION 4.5.18, "MEDICAL ARTS OVERLAY DISTRICT", TO PROVIDE FOR THE CREATION AND IMPLEMENTATION OF THE MEDICAL ARTS OVERLAY DISTRICT; AND AMENDING APPENDIX "A", "DEFINITIONS", OF THE LAND DEVELOPMENT REGULATIONS TO DEFINE "INSTITUTIONAL USES"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 09-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a city-initiated amendment to amend the LDRs to create and implement a Medical Arts Overlay District. This is accompanied by two (2) other related ordinances (10-11 and 11-11); all three ordinances address how the city regulates Residential and Non-Residential Licensed

Service Providers. Mr. Dorling stated this ordinance creates a Medical Arts Overlay District to include institution-like uses including hospitals and non-residential licensed service provider facilities (intensive inpatient/detoxification type facilities) within the overlay district which encompasses Community Facilities (CF), Planned Office Center (POC), and Planned Commercial (PC) zoning districts located at the corner of Linton Boulevard and Military Trail. The overlay district encompasses the general area of Military Trail and Linton Boulevard and includes the existing Delray Medical Center, South County Mental Health Center, Inc., Fair Oaks Hospital, Palm Court Plaza, Wal-Mart Center, Delray Town Center, Delray Outpatient Properties, Linton Oaks Square, Linton Office Park, and the South County Professional Centre Condo.

At its meeting of February 28, 2011, the Planning and Zoning Board voted 5 to 0 vote.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 09-11, the public hearing was closed.

Mr. Frankel moved to approve Ordinance No. 09-11 on First Reading/First Public Hearing, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

10.C. ORDINANCE NO. 10-11 (FIRST READING/FIRST PUBLIC HEARING): Consider amending the Land Development Regulations (LDR) by repealing Section 4.3.3(d), “Residential and Non-Residential Licensed Service Provider Facilities” in its entirety; amending Sections 4.4.2 “Rural Residential (RR) Zone District”, 4.4.3 “Single Family Residential (R-1) Districts”, 4.4.5 “Low Density Residential (RL) District”, 4.4.6 “Medium Density Residential (RM) District”, 4.4.7 “Planned Residential Development (PRD) District”, 4.4.17 “Residential Office (RO) District”, 4.4.24 “Old School Square Historic Arts District (OSSHAD)”, 4.4.29 “Mixed Residential Office and Commercial (MROC) District”, to include residential licensed service provider facilities as permitted uses in these zoning districts; amending Sections 4.4.6 “Medium Density Residential (RM) District”; 4.4.9 “General Commercial District” (GC), 4.4.13 “Central Business District (CBD), 4.4.16 “Professional and Office District”, 4.4.17 “Residential Office (RO) District” and 4.4.24 “Old School Square Historic Arts District (OSSHAD)”; to clarify that residential licensed service provider facilities and nursing homes are allowed where other residential uses are allowed in these zoning districts; amending Appendix “A” , “Definitions”, in order to provide updated definitions of “Residential Licensed Service Provider” and “Non-Residential Licensed Service Provider”. If passed, a second public hearing will be held on April 5, 2011.

The caption of Ordinance No. 10-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF
THE CITY OF DELRAY BEACH, FLORIDA,

AMENDING THE LAND DEVELOPMENT REGULATIONS BY REPEALING SECTION 4.3.3(D), "RESIDENTIAL AND NON-RESIDENTIAL LICENSED SERVICE PROVIDER FACILITIES" IN ITS ENTIRETY; AMENDING SECTIONS 4.4.2, "RURAL RESIDENTIAL (RR) ZONE DISTRICT", 4.4.3, "SINGLE FAMILY RESIDENTIAL (R-1) DISTRICTS", 4.4.5, "LOW DENSITY RESIDENTIAL (RL) DISTRICT", 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT", 4.4.7, "PLANNED RESIDENTIAL DEVELOPMENT (PRD) DISTRICT", 4.4.17, "RESIDENTIAL OFFICE (RO) DISTRICT", 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", 4.4.29, "MIXED RESIDENTIAL OFFICE AND COMMERCIAL (MROC) DISTRICT" TO INCLUDE RESIDENTIAL LICENSED SERVICE PROVIDER FACILITIES AMONG THE LIST OF PERMITTED USES IN THESE ZONING DISTRICTS; AMENDING SECTIONS 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT"; 4.4.9, "GENERAL COMMERCIAL DISTRICT" (GC), 4.4.13, "CENTRAL BUSINESS DISTRICT (CBD), 4.4.16, "PROFESSIONAL AND OFFICE DISTRICT", 4.4.17, "RESIDENTIAL OFFICE (RO) DISTRICT"; AND 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)"; TO CLARIFY THAT RESIDENTIAL LICENSED SERVICE PROVIDER FACILITIES AND NURSING HOMES ARE ALLOWED WHERE OTHER RESIDENTIAL USES ARE ALLOWED IN THESE ZONING DISTRICTS; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO PROVIDE UPDATED DEFINITIONS OF "RESIDENTIAL LICENSED SERVICE PROVIDER" AND "NONRESIDENTIAL LICENSED SERVICE PROVIDER"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 10-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, AICP, Director of Planning and Zoning, stated this repeals current specific regulations pertaining to Residential and Non-Residential Licensed

Service Providers and specifies the zoning districts in which such uses are allowed. This is accompanied by two (2) other related ordinances (09-11 and 11-11); all three ordinances address how the city regulates Residential and Non-Residential Licensed Service Providers. Mr. Dorling stated Ordinance No. 10-11 repeals LDR Section 4.3.3(D), "Residential and Non-Residential Licensed Service Provider Facilities" in its entirety in order to clarify that the residential component of these facilities shall be permitted as of right, the same as other residential uses in the various zoning districts where residential uses are allowed. These changes are being processed to bring our Code up to current legal standards based on recent case law. Recent case law has determined these Residential Licensed Service Provider uses must be treated the same as any other residential uses. The Special Regulations Section 4.3.3 currently contains restrictive elements specific to Residential Licensed Service Providers, such as minimum separation distances, minimum floor area for bedrooms, minimum floor area devoted to common areas, locational restrictions (not within 1,200 feet of any private or public school), etc. Mr. Dorling stated Residential Licensed Service Providers are allowed as a conditional use or not at all in certain residential districts. To comport with current case law they are being added as permitted uses subject to regulations applied to all residential uses. These include regulations that control transient residential uses, landlord permits, and the definition of "family". Also, nursing homes where allowed are being moved from uses permitted by conditional use to permitted by right, to maintain consistency.

At its meeting of February 28, 2011, the Planning and Zoning Board voted 3 to 0 to recommend approval.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 10-11, the public hearing was closed.

Mr. Eliopoulos moved to approve Ordinance No. 10-11 on First Reading/First Public Hearing, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

10.D. **ORDINANCE NO. 07-11:** Consider repealing Ordinance No. 40-10 regarding proposed revisions to the Charter of the City of Delray Beach.

The caption of Ordinance No. 07-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REPEALING ORDINANCE 40-10 REGARDING PROPOSED CHANGES TO THE DELRAY BEACH CHARTER; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 07-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

The City Attorney stated this ordinance repeals Ordinance No. 40-10 regarding proposed revisions to the Charter of the City of Delray Beach which the Commission gave direction to staff that due to the fact that with the Commission election we would not place those changes on the ballot.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 07-11, the public hearing was closed.

Mr. Frankel moved to adopt Ordinance No. 07-11 on Second and FINAL Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

10.E. **ORDINANCE NO. 08-11:** Consider approval to amend Chapter 112, "Alarm Systems", by amending Sections 112.20, "Application For Alarm Registration; Reporting Changes To Required Information; Renewal", and 112.21, "Alarm Registration Required; Penalty For Failure To Register", to provide that renewals shall be filed by May 1st each year and to clarify registration requirements for fire alarms.

The caption of Ordinance No. 08-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 112, "ALARM SYSTEMS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTIONS 112.20, "APPLICATION FOR ALARM REGISTRATION; REPORTING CHANGES TO REQUIRED INFORMATION; RENEWAL" AND 112.21, "ALARM REGISTRATION REQUIRED; PENALTY FOR FAILURE TO REGISTER" TO PROVIDE THAT RENEWALS SHALL BE FILED BY MAY 1 EACH YEAR AND TO CLARIFY REQUIREMENTS FOR BURGLAR/FIRE ALARMS; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 08-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lula Butler, Director of Community Improvement, clarified that under LDR Section 112.21 it requires that fire alarm systems be required to register them upon notice from the Fire-Rescue Department. Mrs. Butler stated all other burglar alarms and residential alarms shall be required to obtain a valid alarm registration upon the emission of one false/nuisance alarm. In addition, Mrs. Butler stated staff has changed the annual renewal date because of when staff expects the software to come online.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 08-11, the public hearing was closed.

Mr. Eliopoulos moved to adopt Ordinance No. 08-11 on Second and FINAL Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

At this point, the time being 7:42 p.m., the Commission moved to **First Readings.**

12. FIRST READINGS:

12.A. ORDINANCE NO. 05-11: Consider amending Chapter 132, “Offenses Against Public Peace And Safety”, by enacting Section 132.10, “Electric Personal Assistive Mobility Devices, (EPAMDS)”, to regulate the use of such devices on city streets and sidewalks. If passed, a public hearing will be held on April 5, 2011.

The caption of Ordinance No. 05-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 132, “OFFENSES AGAINST PUBLIC PEACE AND SAFETY”, OF THE CODE OF ORDINANCES BY ENACTING SECTION 132.10, “ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES, (EPAMDS)”, TO REGULATE THE USE OF SUCH DEVICES ON CITY STREETS AND SIDEWALKS, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 05-11 is on file in the City Clerk’s office.)

The City Attorney read the caption of the ordinance and stated in the discussion of the previous ordinance (04-11) a lot of the things that were discussed are included in this ordinance and staff can also include some of the other things that they have brought up. The City Attorney stated this ordinance will be the base ordinance for the City that governs the segway use in the City. He stated right now under State Statute unless a City enacts another ordinance segways are allowed on roads under 25 mph, where bicycles are allowed, and on sidewalks.

Mr. Frankel commented about page two with regard to the Americans with Disabilities Act (ADA) and stated Disney World banned segways from their parks because they were not approved by the FDA as medical devices. Mr. Frankel asked if the ADA would still apply if it is not a medical device. The City Attorney stated he can research this and look into this. Mr. Frankel suggested specifying a certain time for training somewhere between 15 and 45 minutes and that it be required for people to wear a metallic safety vest so that they will stand out and be easily seen. Mr. Frankel stated this is a safety measure that is not too expensive. The City Attorney stated in discussion of the previous ordinance the applicant had mentioned the speed limit on the west side along A-1-A and suggested that this be reduced to 4 mph if we still keep A-1-A on the west side in this ordinance.

Mayor McDuffie and Commissioner Eliopoulos concurred with comments expressed by Commissioner Frankel.

Mr. Frankel commented about whether or not the Commission would like to allow segways on sidewalks or not. Mr. Eliopoulos suggested that staff review the route and see whether or not it is appropriate for the segways to be on it or not. The City Attorney asked the applicant and any other interested parties if they could give the route to staff as soon as possible so that way we might be able to modify the ordinance or get a consensus.

Brief discussion continued between the City Attorney and the Commission.

Mr. Frankel moved to approve Ordinance No. 05-11 on FIRST Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 3 to 0 vote.

12.B. ORDINANCE NO. 06-11: Privately initiated Future Land Use Map amendment from (Medium Density Residential 5-12du/ac) to GC (General Commercial) and rezoning from RM (Medium Density Residential) to AC (Automotive Commercial) for a 0.22 acre parcel located immediately east of the existing Presidential Auto Leasing and Sales, located at the southeast corner of South Federal Highway and Avenue “L”. If passed, a public hearing will be held on April 5, 2011.

The caption of Ordinance No. 06-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP DESIGNATION AS CONTAINED IN THE COMPREHENSIVE PLAN FROM MD (MEDIUM DENSITY RESIDENTIAL 5-12 DU/AC); TO GC (GENERAL COMMERCIAL); ELECTING TO PROCEED UNDER THE SINGLE HEARING ADOPTION PROCESS FOR SMALL SCALE LAND USE PLAN AMENDMENTS; AND REZONING AND PLACING LAND PRESENTLY ZONED RM (MEDIUM DENSITY RESIDENTIAL) TO AC (AUTOMOTIVE COMMERCIAL) DISTRICT; SAID LAND BEING A PARCEL OF LAND LOCATED ON THE SOUTH SIDE OF AVENUE "L", APPROXIMATELY 357 FEET EAST OF SOUTH FEDERAL HIGHWAY (U.S. HIGHWAY NO. 1) , AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "ZONING MAP OF DELRAY BEACH, FLORIDA, OCTOBER 2009"; PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 06-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this is a privately initiated Future Land Use Map (FLUM) Amendment from MD (Medium Density 5-12 du/acre) to GC (General Commercial) and rezoning from RM (Medium Density Residential) to AC (Automotive Commercial) for property located on the south side of Avenue "L", 357 feet east of Federal Highway. The property subject to the proposed FLUM amendment and rezoning is Lots 55 through 58 of the Del Raton Park subdivision and consists of 0.22 acres. This property is currently vacant and the applicant proposes to utilize it as a parking area for the adjacent residential uses. At its meeting of June 23, 1992, the City Commission denied a privately initiated rezoning application to change the designation of the subject property from RM to CF (Community Facilities) and establish a 23-space parking lot for the adjacent automotive use. Staff recommends denial of the current request as this would represent further encroachment of commercial use into the adjacent residential neighborhoods to the south and east and is incompatible with these uses. Mr. Dorling stated there are some required findings that need to be made to meet valid reasons for a FLUM change and these have not been provided by the applicant. Staff believes that the existing MD (Medium Density 5-12 du/acre) designation is more appropriate as it maintains a stock of land for multiple family residential uses in the future and would accent future population growth within the City. The proposed rezoning does not fulfill any of the required rezoning reasons identified in the LDRs. Therefore, Mr. Dorling stated because those required findings are not met

staff recommends denial.

At its meeting of February 28, 2011, the Planning and Zoning Board recommended approval with a 3 to 1 (Miller opposing) vote. One person from the public expressed a concern over the traffic congestion on Avenue "L." The City has also received a letter from the Tropic Isle Civic Association in support of the proposed changes which is attached to the Planning and Zoning Board staff report.

Michael Listick, Attorney representing the applicant, stated staff states that this is encroaching into residential and commented that there is parking for the dealership, parking in the shopping center, a condominium with a drive into the condominium (rear entrance) and noted parking for the swimming pool. Mr. Listick stated this is not inconsistent with what is around it but it is very consistent.

Mr. Eliopoulos stated the Commission has to review this and determine that this is a strong case because this will set a precedent.

Mr. Frankel moved to approve Ordinance No. 06-11 on FIRST Reading, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Frankel – Yes. Said motion passed with a 3 to 0 vote.

12.C. ORDINANCE NO. 11-11: Consider a city-initiated amendment to Land Development Regulations (LDR) Appendix "A", "Definitions", to provide a revised definition for Medical Office. If passed, a public hearing will be held on April 5, 2011.

The caption of Ordinance No. 11-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, BY AMENDING APPENDIX "A", "DEFINITIONS", TO ENACT A REVISED DEFINITION FOR "MEDICAL OFFICE", PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 11-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this ordinance amends the definition of Medical Office to include the outpatient programs referenced in Section 397.311 of the Florida Statutes dealing with Substance Abuse Services. This is to clarify and differentiate between outpatient medical treatment and intensive inpatient medical treatment including detoxification facilities which are institutional in nature. Non-institutional medical uses are currently, and will continue to

be allowed in medical office districts. Institutional medical uses, including intensive inpatient treatment facilities, will be allowed in the new Medical Arts District. Mr. Dorling stated many of our zoning districts that allow medical office uses are in mixed districts that allow residential uses or are located in close proximity to residential uses.

At its meeting of February 28, 2011, the Planning and Zoning Board voted 5 to 0 to recommend approval.

Mr. Eliopoulos moved to approve Ordinance No. 11-11 on FIRST Reading, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Frankel – Yes; Mayor McDuffie – Yes. Said motion passed with a 3 to 0 vote.

At this point, the time being 8:00 p.m., the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items from the City Manager, City Attorney and City Commission.**

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated Commissioner Frankel expressed concern about creating a problem with the five (5) foot clearance on sidewalks. The City Manager stated most of the complaints are centered on about four locations along East Atlantic Avenue. Code Enforcement staff has met with Clean and Safe Police Supervisor to coordinate a more focused and direct enforcement of the rules since a lot of the violations occur in the evening hours. However, the City Manager stated when the City has an event such as the tennis tournament the pedestrian crowd creates gridlock on the sidewalks. The City Manager stated both Police and Code Enforcement are focused on monitoring the five (5) foot clear path daily; ready to issue any civil violation notices as needed.

Secondly, the City Manager stated Mayor McDuffie had inquired about Police and Community Improvement working on noise issues coming from some establishments in the downtown area and there are about a half of dozen restaurants creating excessive noise either from outdoor speaker systems or live bands. The City Manager stated because most of the noise occurs in the evening hours and Police will be issuing warnings and civil citations for all the noise problems. He stated the Police had been focused primarily on decibel readings but that has not solved the conflict so they are now focusing on other parts of the Code.

The City Manager stated at the March 1, 2011 City Commission meeting there was a comment about the light in Worthing Park that was bothering the residents living above it. On March 4, 2011, the light was worked on and it is now a lot dimmer. The City has requested a shield be put on the south side of the globe like is done on A-1-A and Atlantic Avenue.

13.B. **City Attorney**

The City Attorney had no comments and inquiries on non-agenda items.

13.C. **City Commission**

13.C.1. **Mr. Eliopoulos**

Mr. Eliopoulos had no comments or inquiries on non-agenda items.

13.C.2. **Mr. Frankel**

Mr. Frankel stated the St. Patrick's Day Parade was amazing and everyone did a great job. Mr. Frankel commended staff that cleaned after the event and stated on Sunday morning the City was spotless.

13.C.3. **Mayor McDuffie**

Mayor McDuffie thanked Vice Mayor Frankel for taking care of the Workshop Meeting.

Secondly, Mayor McDuffie gave tremendous accolades for the parade and extended kudos to the clean up staff.

Lastly, Mayor McDuffie thanked the Commission for taking care of everything while he was off.

There being no further business, Mayor McDuffie declared the meeting adjourned at 8:06 p.m.



City Clerk

ATTEST:



MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on March 15, 2011, which Minutes were formally approved and adopted by the City Commission on April 5, 2011.



City Clerk

NOTE TO READER:

If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval which may involve some amendments, additions or deletions as set forth above.

